

10.42

TO ALL EMPLOYEES

Published in advance of incorporation in
NRC Manual Chapter 4136
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UNITED STATES NUCLEAR REGULATORY COMMISSION
NRC MANUAL

BULLETIN

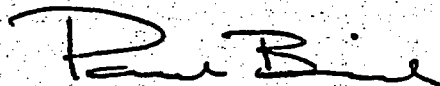
NO. 4136 - 221

DATE: July 12, 1989

SUBJECT: DOCUMENTATION OF COMPRESSED WORK SCHEDULE USAGE

1. Purpose. Recently the Commission approved continuation of the Compressed Work Schedule (CWS) option for non-bargaining unit employees. At that time the Commission requested an annual report on the effect of CWS on the operational performance of the Agency.
2. Coverage. The provisions of this Bulletin apply to all NRC employees.
3. Procedures for Recording Time and Attendance. In order to obtain the data necessary to provide this report to the Commission, statistics relative to the "usage" of CWS will be collected every two weeks. The NRC Form 704 - Time and Attendance (T&A)-will be used for this purpose. Employees on a compressed work schedule and their Time and Attendance Clerks will ensure that the relevant information is obtained in order to properly record the T&A cards. These cards will be annotated as indicated in the example illustrated on the back of this Bulletin, using the reporting codes provided. This action will begin with the pay period commencing July 16, 1989.

Questions regarding this Bulletin should be directed to Mary Louise Roe on extension 24649.



Paul E. Bird, Director
Office of Personnel

For all employees on a CWS schedule, please use one of the following codes to best describe your usage of your CWS day during the pay period. For example, if you took your scheduled day off, enter the number one (1) on the T&A card in the Employee's Name block next to the "C" which should be circled if the employee is on CWS, as shown below.

CODE	USAGE
1	Took scheduled CWS day off
2	Took no CWS day this pay period due to mission requirements
3	Took less than a full CWS day this pay period due to mission requirements
4	Took alternative CWS day in lieu of scheduled CWS day due to mission requirements
5	Used CWS day in lieu of annual or sick leave
6	Took time off in two increments during pay period in lieu of CWS day (managers only)

TIME AND ATTENDANCE
NRC FORM 704
12-88
NRCM 4137

PAY PERIOD		YEAR		WORK SCHEDULE		SOCIAL SECURITY NO.		EMPLOYEE'S NAME				T&A UNIT						
								1 (C)										
OTHER ABSENCE CODES AW - Absence Without Leave CN - Commission of Pay CL - Court Leave CP - Comp Time Used EX - Excused Absence HO - Holiday Leave LW - Leave Without Pay ML - Military Leave RE - Representations Functions (including Official Union Business) RS - Resigned Leave RU - Religious Observance Comp Time Used		LEAVE		OTHER ABSENCE				TOTAL		FROM		TO		PREMIUM HOURS		OTHER PREMIUM HOURS		
		REG. HOURS	ANNUAL	SICK	CODE	HOURS	CODE	HOURS	HOURS			OVER TIME	COMP TIME EARNED	NIGHT DIFFER	SUNDAY	HOLIDAY	CODE	HOURS
OTHER PREMIUM HOUR CODES AO - Regularly Scheduled Overtime RC - Religious Observance Comp Time Earned		SUN																
		MON																
		TUES																
		WED																
		THUR																
		FRI																
		SAT																
TOTAL WEEK 1																		
REMARKS		SUN																
		MON																
		TUES																
		WED																
		THUR																
		FRI																
		SAT																
TOTAL WEEK 2																		
Hours Recorded are Correct (NRCM-4137)				Overtime Approved (NRCM-4137)				Certified Correct (NRCM-1101)										
EMPLOYEE'S SIGNATURE				OVERTIME APPROVAL SIGNATURE				CERTIFYING OFFICIAL'S SIGNATURE										

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UNITED STATES NUCLEAR REGULATORY COMMISSION
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BULLETIN

NO. 4136-196

DATE: June 2, 1988

SUBJECT: COMPRESSED WORK SCHEDULE FOR NON-BARGAINING UNIT EMPLOYEES

1. Purpose. Announcement No. 61 dated April 1, 1988, informed all employees that effective May 8, 1988, all non-bargaining unit employees including members of the SES, will be extended the opportunity to work on Compressed Work Schedules (CWS). Effective May 8, 1988, applicable sections of NRC Manual Chapter and Appendix 4136, "Hours of Work and Premium Pay," are superseded and the provisions of this Bulletin govern.
2. Coverage. The provisions of this Bulletin apply to all non-bargaining unit employees.
3. Authority to Approve a CWS. Whether or not an employee is permitted to work a CWS is entirely at the discretion of management, and a decision to deny an employee the opportunity to work a CWS is non-grievable. (Conversely, management may not require an employee to work a CWS if the employee does not want to work a CWS.) Office Directors and Regional Administrators are delegated the authority to approve or deny CWS for their subordinate employees; this authority may be redelegated.

It remains a management prerogative to establish tours of duty for employees; therefore, management's decisions on arrival and departure times, as well as on days off for those authorized to work a CWS, are final and non-grievable.

4. CWS Options. For employees who choose to and are permitted to work a CWS, the following options are available, subject to supervisory approval:

- ° For Headquarters employees, 9-hour days may start as early as 6:45 a.m., as late as 8:15 a.m., or (in 15-minute increments), at any time between those two times. (Regional starting times are established by each Region.)
 - ° The 9-hour days will end 9 hours and 45 minutes after the starting time, encompassing a 45-minute lunch break normally to be taken between 11:30 a.m. and 1:00 p.m.
 - ° The employee's scheduled day off may be any day in the pay period.
 - ° The employee's scheduled 8-hour day may be any day in the pay period. For Headquarters employees, the 8-hour day may start as early as 6:45 a.m. or as late as 8:45 a.m.
5. Working on Scheduled CWS Day Off. The needs of the Agency come first, and may on occasion require that the employee work on his/her scheduled day off. When this happens, non-SES employees not at the statutory maximum are paid overtime, or may, with supervisory approval, be granted compensatory time, for the period of time worked. Alternatively, those employees, and also SES employees and employees at the statutory maximum who are not entitled to overtime (or compensatory time), may, with supervisory approval, select another day in the same pay period as the CWS day off. (CWS regulations do not permit employees to "save" an unused CWS day off for use in a subsequent pay period.)
6. Changes Into or Out of CWS May Commence Only at the Beginning of a Pay Period. CWS work schedules and Regular 8-hour work schedules are under different parts of the law (5 US Code Chapter 61, Subchapters I and II), and have different entitlements and definitions for overtime, leave, etc. Therefore, only in rare instances should a change be made mid-pay period from one type of work schedule to another. Prior to making any such change contact Policy and Labor Relations Staff, Office of Personnel, at 492-8234 for further guidance. In addition, supervisors should consider temporarily terminating a CWS schedule to accommodate training or travel requirements. If the supervisor decides to terminate for that reason, he/she should do it and notify the employee before the end of the pay period immediately preceding the training or travel.
7. Other Considerations. Managers and supervisors should be mindful of the effects of CWS on the efficiency of operations. Proper supervisory coverage and adequate staffing levels should be maintained throughout the entire pay period.

To the extent feasible, scheduling of the arrival and departure times of employees should be staggered to help reduce traffic congestion during peak morning and evening rush hours. This is particularly necessary at the White Flint building because of the limitations imposed by Montgomery County zoning regulations. A separate notice will be issued at a later date specifying the times of peak congestion during the morning and evening rush hours on Rockville Pike in the vicinity of One White Flint North.

Managers whose job requirements will not allow a routine full day off under a CWS schedule may, at their Office Director's/Regional Administrator's discretion, be allowed a more flexible schedule. Under the flexible schedule, the hours off which are earned by working 9-hour extended workdays in a pay period may be used in two increments during that pay period. Managers working such schedules are required to account for 80 hours of work per pay period. Hours accumulated by working 9-hour extended workdays may not be carried forward into a subsequent pay period. This more flexible schedule may commence only at the beginning of a pay period.



Paul E. Bird, Director
Office of Personnel

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BULLETIN

NO. 4136 - 166

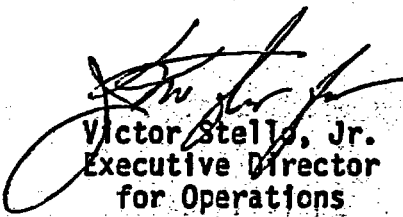
DATE: June 5, 1987

SUBJECT: REVISION IN DELEGATIONS OF AUTHORITY

1. Purpose: This Bulletin revises responsibilities and delegations of authority to conform with the NRC reorganization, effective April 12, 1987. These changes will be reflected in the next revision of Chapter 4136.
2. Generic Change: In 035 and throughout, (including Bulletin 4136-103) references to the Director, Division of Organization and Personnel, should be construed as references to the Director, Office of Personnel.
3. Specific Changes: Revised responsibilities are listed below.

<u>Citations</u>	<u>Function</u>	<u>From</u>	<u>To</u>
032 a.	Establishes administrative workweek and work schedules in the Washington, DC area.	Director, Office of Administration	Director, Office of Personnel
032 b. 036 f. 053 b. Bulletin 4136-103, paragraph 4.b.1	Approves assignment of alternative work schedules for reasons other than operating, training, or religious observance.	Director, Office of Administration	Director, Office of Personnel
032 c. 057 e.	Obtains approval of the Commissioner Public Buildings Service regarding changes in work schedules.	Director, Office of Administration	Deputy Director, for Administration

<u>Citations</u>	<u>Function</u>	<u>From</u>	<u>To</u>
034 a., thru c.	Assures compliance with applicable requirements for payment of overtime; insures correct payments; assures employee indebtedness for religious observance is satisfied at time of separation or transfer.	The Controller	Director, Division of Accounting and Finance
Bulletin 4136-124, paragraphs 2., 3. & 4.	Approves exceptions to core hours.	Director, Office of Administration	Director, Office of Personnel


Victor Stello, Jr.
Executive Director
for Operations

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NRC Manual Chapter 4136

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UNITED STATES NUCLEAR REGULATORY COMMISSION
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BULLETIN

NO. 4136-124

DATE: November 1, 1984

SUBJECT: CORE HOURS

1. Purpose and Coverage

This Bulletin provides:

...information on core hours together with appropriate starting and departure times for various work schedules

...procedures for approval of exceptions based on individual hardship

When Compressed Work Schedule (CWS) begins on November 25 core hours will be expanded, as stated in the October 11, 1984, revision to Appendix 4136, Part II and in Announcement Number 95 dated September 21, 1984.

This Bulletin applies to all employees who work a CWS, flexitime, or regular work schedule.

a. Headquarters

Core hours, when all employees should be present (or on approved leave, other approved absence, or lunch break) are 9:00 a.m. to 4:00 p.m. The primary purpose of this change is to increase the period of time when employees will be present concurrently to interact, communicate, attend meetings, etc. Scheduled starting hours must reflect the need to work during the new core hours. Thus, no employee should be scheduled to start work prior to 7:15 a.m. nor complete work after 6:00 p.m., unless an exception is granted as stated in 2. below.

- (1) (a) CWS: Starting time for 9-hour days: between 7:15 a.m. and 8:15 a.m.
Departure time (9 hours and 45 minutes later): between 5:00 p.m. and 6:00 p.m.
- (b) Starting time for 8-hour day: between 7:15 a.m. and 9:00 a.m.
Departure time (8 hours and 45 minutes later) between 4:00 p.m. and 5:45 p.m.
- (2) Flexitime: Starting time: between 7:15 a.m. and 9:00 a.m.
Departure time: (8 hours and 45 minutes later) between 4:00 p.m. and 5:45 p.m.
- (3) Regular work schedule: Starting time: 8:15 a.m.
Departure time (8 hours and 45 minutes later): 5:00 p.m.

Starting times for all schedules should be scheduled in 15-minute increments, e.g. at 8:00 a.m., 8:15 a.m., 8:30 a.m., etc.

b. Regional Offices.

In Regional offices, all schedules shall be between 6:00 a.m. and 6:00 p.m. Employees working 8-hour days shall be scheduled to begin work no earlier than 1 hour and 45 minutes prior to the beginning of the regional core hours, and no later than the beginning of core hours. Employees on 9-hour (CWS) days shall be scheduled to begin work no earlier than 2 hours and 45 minutes prior to the beginning of core hours and no later than 8:15 a.m..

Any exceptions should be handled as stated in 2. below.

2. Approval for Exceptions

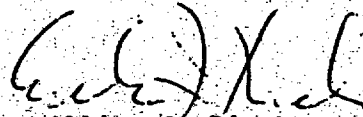
This Bulletin modifies NRC 4136-032, -033, and -036 to establish that all exceptions to the core hours and starting hours described above, for any reason, including operating need or training, shall be approved by the Director, Office of Administration. (This includes all exceptions to be effective on or after November 25, 1984, whether the exception is a newly requested exception or a continuation of a previously approved schedule).

3. Procedures for Hardship Exceptions.

Employees may make requests, in writing, citing any specific hardship which accounts for their request to modify core hours/arrival time. Supervisors shall either endorse or not endorse such requests, prior to forwarding to Office Directors/Regional Administrators. The Office Director/Regional Administrator may disapprove the request. If the Office Director/Regional Administrator endorses the request, it shall be forwarded to the Director, Office of Administration for approval/disapproval.

4. Timing for Exceptions: Start-Up Period.

All requests for exceptions which are requested to be effective on November 25, 1984 (whether they are new exceptions or requests for continuation of previously approved schedules) shall be submitted by the employee to his/her supervisor not later than November 9; and shall be forwarded by the Office Director/Regional Administrator with his/her recommendation to the Director, Office of Administration, not later than November 16.



William J. Dircks
Executive Director for Operations

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UNITED STATES NUCLEAR REGULATORY COMMISSION
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BULLETIN

NO.

4136- 103

DATE: September 19, 1983

SUBJECT:

CHANGE IN REGULATIONS ON HOURS OF DUTY AND PREMIUM PAY

1. PURPOSE: This Bulletin:

a. revises concurrence and documentation requirements for establishing tours of duty based on operating or training needs (see 4.b. below);

b. incorporates the information on new Office of Personnel Management (OPM) regulations which were previously transmitted in Bulletin 4136-101 dated March 17, 1983, with only minor changes to reflect the new requirements mentioned in a. above. That Bulletin is superseded, except for the attachment, "Excerpted from FPM Bulletin 610-37 dated February 17, 1983," which should be retained and attached to this Bulletin.

Bulletin 4136-101 required annotating in pen and ink at the beginning of NRC Chapter 4136 and each of the Appendix Parts (except Parts VII and VIII) the following: "Parts of this material have been modified by NRC Bulletin No. 101 dated 3/17/83." Please add to that annotation, "Now covered under NRC Bulletin 4136- 103 dated 9/19/83 ." The Chapter and Appendix will be revised to reflect the changes.

2. COVERAGE: All employees are covered, except: (a) locality rate employees; and (b) members of the Senior Executive Service.

3. EFFECTIVE DATE: The revised concurrence and documentation requirements (4.b. below) are effective 9/19/83 , the recently added OPM requirements (4.c. below) were effective February 28, 1983.

4. ESTABLISHING REGULARLY SCHEDULED ADMINISTRATIVE WORKWEEKS:

a. Current and Continuing Responsibilities: Under NRC 4136-057 and -0513b, Office Directors/Regional Administrators (hereafter referred to as approving authorities), establish and document for each employee tours of duty deviating from the normal 8-hour (Monday-Friday) tour of duty. These tours of duty are established in advance of the administrative workweek and constitute the regularly scheduled administrative workweek. (From the establishment and documentation of these tours of duty stem the employee's entitlement to premium pay. Regularly scheduled overtime work performed by an employee entitles the employee only to overtime pay; there is no entitlement to compensatory time for regularly scheduled overtime work.)

b. Change in Concurrence and Documentation Requirements:

(1) This Bulletin deletes the requirement that Office Directors and Regional Administrators without delegated personnel authority obtain concurrence of the Director, Division of Organization and Personnel (O&P), to establish tours of duty based on operating or training needs:

- for full-time employees unless these tours are for a first 40-hour tour of duty. Previously, Office Directors and such Regional Administrators were required to obtain O&P concurrence for tours deviating from the normal 8-hour tour Monday through Friday.
- for part-time employees, unless an SF-50, "Notification of Personnel Action," is required. An SF-50 is required only when the new tour changes the total number of hours in an administrative workweek that the employee is scheduled to work, and the change is expected to continue longer than two pay periods.

This change makes approving authorities solely responsible for properly establishing these tours of duty. Approving authorities are still required to obtain approval of the Director, Office of Administration, for altering tours of duty for reasons other than operating, training, or religious observance needs.

(2) The SF-52, "Request for Personnel Action," will no longer be used to document tours of duty unless they change the total number of basic hours during the administrative workweek that an employee is scheduled to work. Instead, these changes to the specific days and hours of the tour of duty will be made in advance of the start of the administrative workweek (see c. below) and recorded on a memorandum addressed to the employee(s) from the approving authority. At the same time, the approving authority shall forward a copy of the memorandum to the Division of Accounting and Finance (RM). This memorandum may be combined with the memorandum used to establish regularly scheduled overtime (NRC 4136-0513b). (In accordance with (1) above, approving authorities do not need O&P concurrence to establish regularly scheduled overtime.)

c. Recently Added OPM Requirements:

(1) The recently added OPM regulation requires that if approving authorities know in advance of an administrative workweek that the specific days and/or hours of a day required of a particular employee will differ from those required in the established tour of duty, the approving authorities shall reschedule the employee's regularly scheduled administrative workweek to correspond with those specific days and hours. Entitlements to premium pay for night, Sunday, holiday, and regularly scheduled overtime work are based on this recently added requirement. Any additional work assigned to a full-time employee after commencement of the administrative workweek constitutes irregular and occasional overtime work. This irregular and occasional overtime work would not entitle the employee to other premium pay (for example, night differential).

The key to this requirement is that the approving authority who is responsible for scheduling the work of employees: (a) has knowledge of the different work requirement before the administrative workweek begins; and (b) has the capability of determining which employee should have the specific days and hours of his or her tour of duty rescheduled to meet this work requirement. Having this knowledge, the approving authority is responsible for scheduling the work as part of the employee's regularly scheduled tour of duty, and such work is "regularly scheduled" work. However, if the approving authority does not know of the requirement for additional work until after commencement of the administrative workweek, he or she has no recourse but to order an employee to perform such work in addition to his or her regularly scheduled tour of duty; and this additional work would be irregular or occasional work. The same would apply if the need for the additional work is known in advance of the administrative workweek, but the official does not know which days or hours the work will be required, or does not know which employee will be required to perform the work. In this case, when the approving authority orders the additional overtime work during the administrative workweek, such work is irregular or occasional work. (Irregular and occasional overtime work requires submission of an NRC Form 145, "Request and Authorization for Irregular and Occasional Overtime Work," to Payroll.)

(2) If it is determined that the approving authority should have scheduled a period of work as part of the employee's regularly scheduled administrative workweek and failed to do so, the employee shall be entitled to the payment of premium pay for that period of work as regularly scheduled work. (Approving authorities may make this determination, and shall annotate the "Remarks" section of the Time and Attendance NRC Form 704 to reflect this determination.)

(3) If it becomes necessary to change an employee's tour of duty after commencement of the administrative workweek, the employee is entitled to night differential when he or she is temporarily assigned during the administrative workweek to a daily tour of duty that includes nightwork. (Approving authorities shall annotate such changes in the daily tour of duty in the "Remarks" section of the Time and Attendance NRC Form 704

for each employee involved in the change.) This temporary change is distinguished from a period of irregular or occasional overtime work in addition to the employee's regularly scheduled administrative workweek.

5. ADDITIONAL REGULATORY CLARIFICATIONS:

- Sunday and holiday work definitions clarify that the work must be performed to be payable at premium rates, and that Sunday and holiday work are mutually exclusive of overtime work.
- Nightwork is not mutually exclusive of overtime work.
- First 40-hour tours of duty: for employees on the "first 40-hour" tour of duty, all work performed within the first 40 hours is considered regularly scheduled work for premium pay and hours of duty purposes.

6. NEW REGULATIONS ON HOURS OF DUTY AND PREMIUM PAY: See attachment excerpted from FPM Bulletin dated February 17, 1983. For additional material not contained in the attachment, see 5 CFR Parts 550 and 610.

7. CONTACT: For further information, contact the Policy and Program Development Branch of O&P at 492-9500.



Paul E. Bird, Director
Division of Organization and Personnel

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UNITED STATES NUCLEAR REGULATORY COMMISSION
NRC MANUAL

BULLETIN

NO. 4136-101

DATE: March 17, 1983

SUBJECT: CHANGE IN REGULATIONS ON HOURS OF DUTY AND PREMIUM PAY

PURPOSE: To transmit new regulations pertaining to Pay Administration (5 CFR Part 550) and Hours of Work (5 CFR Part 610). NRC Manual Chapter 4136 will be revised to reflect these changes. In the interim, please annotate in pen and ink at the beginning of the Chapter and each of the Appendix Parts (except Parts VII and VIII) the following: "Parts of this material have been modified by NRC Bulletin No. 4136-101, dated 3/17/83."

The Office of Personnel Management (OPM) has revised regulations on: a) an agency's responsibility to establish regularly scheduled workweeks for its employees and b) an employee's entitlement to premium pay for regularly scheduled work at night, on Sunday, or on a holiday, or for overtime work outside his or her regularly scheduled basic workweek.

COVERAGE: All employees are covered, except: a) locality rate employees; and b) members of the Senior Executive Service.

EFFECTIVE DATE: February 28, 1983.

ESTABLISHING REGULARLY SCHEDULED ADMINISTRATIVE WORKWEEKS:

Current and Continuing Responsibilities: Under NRC 4136-057 and-0513b, Office Directors/Regional Administrators (hereafter referred to as approving authorities), with the concurrence of the Director, Division of Organization and Personnel (O&P), establish and document for each employee tours of duty deviating from the normal 8-hour (Monday-Friday) tour of duty. The basic 40-hour tour of duty deviation is established on an SF-52, Request for Personnel Action, (NRC 4136-057); and regularly scheduled overtime work is established by memorandum (NRC 4136-0513). These tours of duty are established in advance of the administrative workweek and constitute the regularly scheduled administrative workweek. (From the establishment and documentation of these tours of duty stem the employee's entitlement to premium pay.

Current and Continuing Responsibilities (Cont'd):

Regularly scheduled overtime work performed by an employee entitles the employee only to overtime pay; there is no entitlement to compensatory time for regularly scheduled overtime work.) There is no change in these responsibilities.

New Requirement: a) The new regulation requires that if approving authorities know in advance of an administrative workweek that the specific days and/or hours of a day required of a particular employee will differ from those required in the established tour of duty, the approving authorities shall reschedule the employee's regularly scheduled administrative workweek to correspond with those specific days and hours. Entitlements to premium pay for night, Sunday, holiday, and regularly scheduled overtime work will be based on this new requirement. Any additional work assigned to a full-time employee after commencement of the administrative workweek constitutes irregular and occasional overtime work. This irregular and occasional overtime work would not entitle the employee to other premium pay.

The key to this requirement is that the approving authority who is responsible for scheduling the work of employees: (1) Has knowledge of the different work requirement before the administrative workweek begins, and (2) has the capability of determining which employee should have the specific days and hours of his or her tour of duty rescheduled to meet this work requirement. Having this knowledge, the approving authority is responsible for scheduling the work as part of the employee's regularly scheduled tour of duty and such work is "regularly scheduled" work. However, if the approving authority does not know of the requirement for additional work until after commencement of the administrative workweek, he or she has no recourse but to order an employee to perform such work in addition to his or her regularly scheduled tour of duty. This additional work would be irregular or occasional work. The same would apply if the need for the additional work is known in advance of the administrative workweek but the official does not know which days or hours the work will be required or does not know which employee will be required to perform the work. In this case, when the approving authority orders the additional overtime work during the administrative workweek, such work is irregular or occasional work. (Irregular and occasional overtime work requires submission of an NRC 145, "Request and Authorization for Irregular and Occasional Overtime Work" to Payroll.)

b) If it is determined that the approving authorities should have scheduled a period of work as part of the employee's regularly scheduled administrative workweek and failed to do so, the employee shall be entitled to the payment of premium pay for that period of work as regularly scheduled work. (Approving authorities may make this determination, and shall annotate the "Remarks" section of the Time and Attendance NRC Form 704 to reflect this determination.)

§ 550.103 Definitions.

(e) "Nightwork" has the meaning given that term in § 550.121, and includes any nightwork performed by an employee as part of his or her regularly scheduled administrative workweek.

(f) "Irregular or occasional overtime work" means overtime work that is not part of an employee's regularly scheduled administrative workweek.

(g) "Regular overtime work" means overtime work that is part of an employee's regularly scheduled administrative workweek.

(i) "Premium pay" means additional pay authorized by subchapter V of chapter 53 of title 5, United States Code, and this subpart for overtime, night, holiday, or Sunday work, and for standby duty or administratively uncontrollable work.

(k) "Tour of duty" means the hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that constitute an employee's regularly scheduled administrative workweek.

(n) "Regularly scheduled administrative workweek" for a full-time employee, means the period within an administrative workweek established in accordance with § 610.111 of this chapter, within which the employee is regularly scheduled to work. For a part-time employee, it means the officially prescribed days and hours within an administrative workweek during which the employee is regularly scheduled to work.

(o) "Sunday work" means nonovertime work performed by an employee during a regularly scheduled daily tour of duty when any part of that daily tour of duty is on a Sunday.

(p) "Regularly scheduled" work means work that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with § 610.111 of this chapter.

(q) "Holiday work" means nonovertime work performed by an employee during a regularly scheduled daily tour of duty on a holiday designated in accordance with § 610.202 of this chapter.

3. In § 550.112, paragraph (d) is revised to read as follows:

§ 550.112 Computation of overtime work.

(d) *Night, Sunday, or holiday work.* Hours of night, Sunday, or holiday work are included in determining for overtime pay purposes the total number of hours of work in an administrative workweek.

4. In § 550.121, paragraph (a) is revised to read as follows:

§ 550.121 Authorization of night pay differential.

(a) Except as provided by paragraph (b) of this section, nightwork is regularly scheduled work performed by an employee between the hours of 8 p.m. and 8 a.m. Subject to § 550.122, and except as otherwise provided in this subpart, an employee who performs nightwork is entitled to pay for that work at his or her rate of basic pay plus a night pay differential amounting to 10 percent of his or her rate of basic pay.

5. In § 550.122, paragraphs (c) and (d) are revised to read as follows:

§ 550.122 Computation of night pay differential.

(c) *Relation to overtime, Sunday, and holiday pay.* Night pay differential is in addition to overtime, Sunday, or holiday pay payable under this subpart and it is not included in the rate of basic pay used to compute the overtime, Sunday, or holiday pay.

(d) *Temporary assignment to a different daily tour of duty.* An employee is entitled to a night pay differential when he or she is temporarily assigned during the administrative workweek to a daily tour of duty that includes nightwork. This temporary change in a daily tour of duty within the employee's regularly scheduled administrative workweek is distinguished from a period of irregular or occasional overtime work in addition to the employee's regularly scheduled administrative workweek.

6. In § 550.131, paragraph (a) is revised to read as follows:

§ 550.131 Authorization of pay for holiday work.

(a) Except as otherwise provided in this subpart, an employee who performs holiday work is entitled to pay at his or her rate of basic pay plus premium pay at a rate equal to his or her rate of basic pay for that holiday work that is not in excess of 8 hours.

§ 610.111 Establishment of workweeks.

(a) The head of each agency, with respect to each full-time employee to whom this subpart applies, shall establish by regulation:

(1) A basic workweek of 40 hours which does not extend over more than 8 of any 7 consecutive days. Except as provided in paragraphs (b) and (c) of this section, the regulation shall specify the days and hours within the administrative workweek that constitute the basic workweek.

(2) A regularly scheduled administrative workweek that consists of the 40-hour basic workweek established in accordance with paragraph (a)(1) of this section, plus the period of regular overtime work, if any, required of each employee. Except as provided in paragraphs (b) and (c) of this section, the regulation, for purposes of leave and overtime pay administration, shall specify by days and hours of each day the periods included in the regularly scheduled administrative workweek that do not constitute a part of the basic workweek.

(b) When it is impracticable to prescribe a regular schedule of definite hours of duty for each workday of a regularly scheduled administrative workweek, the head of an agency may establish the first 40 hours of duty performed within a period of not more than 6 days of the administrative workweek as the basic workweek. A first 40-hour tour of duty is the basic workweek without the requirement for specific days and hours within the administrative workweek. All work performed by an employee within the first 40 hours is considered regularly scheduled work for premium pay and hours of duty purposes. Any additional

hours of officially ordered or approved work within the administrative workweek are overtime work.

3. Section 610.121 is revised to read as follows:

§ 610.121 Establishment of work schedules.

(a) Except when the head of an agency determines that the agency would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he or she shall provide that—

(1) Assignments to tours of duty are scheduled in advance of the administrative workweek over periods of not less than 1 week;

(2) The basic 40-hour workweek is scheduled on 5 days, Monday through Friday when possible, and the 2 days outside the basic workweek are consecutive;

(3) The working hours in each day in the basic workweek are the same;

(4) The basic nonovertime workday may not exceed 8 hours;

(5) The occurrence of holidays may not affect the designation of the basic workweek; and

(6) Breaks in working hours of more than 1 hour may not be scheduled in a basic workday.

(b)(1) The head of an agency shall schedule the work of his or her employees to accomplish the mission of the agency. The head of an agency shall schedule an employee's regularly scheduled administrative workweek so that it corresponds with the employee's actual work requirements.

(2) When the head of an agency knows in advance of an administrative workweek that the specific days and/or hours of a day actually required of an employee in that administrative workweek will differ from those required in the current administrative workweek, he or she shall reschedule the employee's regularly scheduled administrative workweek to correspond with those specific days and hours. The head of the agency shall inform the employee of the change, and he or she shall record the change on the employee's time card or other agency document for recording work.

(3) If it is determined that the head of an agency should have scheduled a period of work as part of the employee's regularly scheduled administrative workweek and failed to do so in accordance with paragraphs (b) (1) and (2) of this section, the employee shall be entitled to the payment of premium pay for that period of work as regularly

scheduled work under Subpart A of Part 550 of this chapter. In this regard, it must be determined that the head of the agency: (i) Had knowledge of the specific days and hours of the work requirement in advance of the administrative workweek, and (ii) had the opportunity to determine which employee had to be scheduled, or rescheduled, to meet the specific days and hours of that work requirement.

(5 U.S.C. 5548 and 6101(c))

(FR Doc 83-2490 Filed 7-27-83; 9:45 am)

BILLING CODE 6325-01-M

Form NRC-489
(1-75)

U. S. NUCLEAR REGULATORY COMMISSION
NRC MANUAL

TRANSMITTAL NOTICE

CHAPTER NRC-4136 HOURS OF WORK AND PREMIUM PAY

SUPERSEDED:

Number	Date
Chapter NRC 4136	5/5/78
NRC Bulletin 4136-31	10/6/78
NRC Bulletin 4136-66	3/20/81*
NRC Bulletin 4136-67	3/20/81
NRC Bulletin 4136-73	8/11/81
Appendix NRC-4136	5/5/78

TRANSMITTED:

Number	Date
TN 4100-49	
Chapter NRC-4136	2/25/82
Page	
Appendix NRC 4136	2/25/82

NOTE: PLEASE RETAIN HANDBOOK COVER NOW IN USE

REMARKS:

This Chapter and Appendix define NRC policies, responsibilities, basic requirements, and procedures governing hours of work and premium pay for NRC employees in conformity with applicable laws, Office of Personnel Management regulations, and Comptroller General decisions. This Chapter and Appendix apply to bargaining unit employees, also, to the extent they are not in specific conflict with or modified by the negotiated agreement with the exclusive representative.

This Chapter and Appendix include these changes:

1. Regional Administrators have been given the same responsibilities as Office Directors.
 2. Religious Observance Work Schedule Adjustment. When an employee's absence from work is required by his/her religious belief, the employee may request to work an alternate schedule at another time, including a Federal holiday, for this purpose.
 3. Fair Labor Standards Act. New 5 CFR 551 regulations on what types of activities constitute "hours of work" under the FLSA are included. The "suffer and permit" concept is also amended to include a requirement that the supervisor must have had an opportunity to prevent the work from being performed.
 4. First-40-Hour Workweek Premium Pay Entitlements. Employees on this type workweek are entitled to night, Sunday and holiday premium pay.
- * expired 6/14/81.

The application of these premiums is discussed. Office Directors or designees, determine holidays for employees on this type of workweek.

5. Work Schedules - General. Office Directors, or designees, document, in advance, work schedules which deviate from the normal 8-hour work period on SF 52, "Request for Personnel Action."
6. Part-Time Work Schedules. Office Directors, or designees, establish part-time work schedules in whole, consecutive hours; work schedules of 6 hours or more are broken by a 45-minute meal break. Office Directors may establish regular work schedules for part-time permanent employees of less than 16 hours per week, where it is deemed necessary. Employees who became part-time permanent on or after April 8, 1979, may not have a regular work schedule exceeding 32 hours per week.
7. Documentation of Regularly Scheduled Overtime Work. Properly authorized officials may establish regularly scheduled overtime by memorandum.
8. Irregular Overtime/Compensatory Time. Nonbargaining unit employees may request compensatory time in lieu of overtime pay for irregular and occasional overtime work, but management may deny the request.
9. Overtime Performed Outside Employee's Immediate Area of Supervision. Procedures are established by which supervisors may request overtime work of employees outside their supervision.
10. Eliminate Requirement to Use Compensatory Time before Annual Leave. This provision is no longer necessary due to the change in compensatory time liquidation.

U.S. NUCLEAR REGULATORY COMMISSION
NRC MANUAL

Volume: 4000 Personnel
Part : 4100 Federal

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CHAPTER 4136 HOURS OF WORK AND PREMIUM PAY

4136-01 COVERAGE

011 This chapter outlines NRC policy, responsibilities, and basic requirements governing hours of work and premium pay for NRC employees in conformity with applicable laws, Office of Personnel Management (OPM) regulations and Comptroller General decisions. *Members of The Senior Executive Service are not entitled to premium pay.*

012 The appendix:

- a. provides procedures and establishes controls over the approval, authorization, justification, and documentation of overtime, night, Sunday and holiday pay and compensatory time.
- b. informs employees, supervisors and managers of the rules governing premium pay.

013 To the extent these regulations are in specific conflict with or are modified by the negotiated agreement with the employees' exclusive representative, the negotiated agreement shall govern for bargaining unit employees.

4136-02 POLICY

021 Hours of work, including flexitime hours, will be established within legal requirements to maximize operational effectiveness, productivity and employee satisfaction.

022 Overtime, night, Sunday and holiday work requiring premium pay shall be held to a minimum consistent with bona fide operational requirements.

023 There shall be prior approval of overtime worked.

024 Under the Fair Labor Standards Act, nonexempt employees ordered, approved, or suffered or permitted to perform overtime work shall be paid overtime for hours worked in excess of 40 in a week. Management may not accept the services of a nonexempt employee without compensating the employee for that work.

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025 Management through its duly authorized supervisory officials may order an employee to perform overtime work. Employees so ordered or directed are obligated to perform such overtime work.

026 Opportunities for approved overtime assignments will be distributed as equitably as possible. In the assignment of overtime, NRC will provide the employee with advance notice when possible. Overtime shall not be assigned or withheld as a reward or penalty.

027 Compensatory time is to be used by the end of the 12th pay period after it is earned. Compensatory time not used by the end of that period will be paid for at the rate at which earned.

028 Exempt employees whose rate of basic pay exceeds the maximum rate of GG-10 shall be paid for irregular or occasional overtime work unless their specific request to earn compensatory time is approved. (Supervisors of bargaining unit employees see negotiated agreement.)

029 Work schedule adjustments for religious observance purposes are permissible. An employee whose personal beliefs require absence from work during certain periods of time may request to engage in work outside regular hours as an offset against time off for meeting those religious requirements.

4136-03 RESPONSIBILITIES AND AUTHORITIES

031 The Executive Director for Operations:

- a. through this issuance, has fixed the time limit in which compensatory time must be used. (See Appendix 4136, Part III.D.1.) This authority may not be redelegated.
- b. through this issuance, has determined that (non-bargaining unit) employees shall be paid for irregular or occasional overtime work unless their specific request to earn compensatory time is approved. (See Appendix 4136, Part III.D.1.). This authority may not be re-delegated.

032 The Director, Office of Administration:

- a. establishes the administrative workweek; and establishes work schedules applicable to full-time employees on a basic workweek in the Washington, D.C., metropolitan area, except for employees on flexitime. (See Appendix 4136, Part II.D.)
- b. approves assignment of alternative work schedules for employees for any reason other than operating, employee training, or religious observance needs.
- c. obtains approval of the Commissioner, Public Buildings Service, General Services Administration, regarding changes in work schedules, as explained in 057.e, below.

033 Regional Administrators establish the administrative workweek and work schedules applicable to full-time employees on a basic workweek in

Approved: February 25, 1982

Regional Offices. In addition, Regional Administrators have the same responsibilities delegated to Office Directors in 036, below. Regional Administrators shall fulfill any other responsibilities assigned through forthcoming NRC directives.

034 The Controller:

- a. maintains appropriate controls and monitors relevant financial and time and attendance records to assure compliance with the documentation requirements of this chapter and appendix prior to issuing checks covering overtime pay.
- b. assures correct payments in accordance with: (1) the dollar limits specified in 0514, below, and (2) overtime payment for nonexempt employees covered by the Fair Labor Standards Act.
- c. assures that employee indebtedness for religious observance time used is satisfied at time of separation or transfer.

035 The Director, Division of Organization and Personnel:

- a. issues NRC-wide instructions on hours of work and premium pay and advises thereon. Coordinates, monitors and evaluates agency flexitime program.
- b. approves requests for premium pay on an annual basis in lieu of other premium pay in certain situations.
- c. determines, documents, and notifies employees whether they are in an exempt or nonexempt category based on OPM guidelines.
- d. concurs with Directors of Offices on:
 - (1) establishing administrative workweeks and work schedules applicable to part-time employees.
 - (2) establishing work schedules for employees regularly assigned to premium pay work and standby duty.
 - (3) establishing administrative workweeks and work schedules deviating from those established by the officials listed in 032 and 033, above, when required by operating or training needs.
 - (4) determining whether to apply the first-40-hour workweek to certain employees.
- e. keeps employees apprised of their status and rights under the FLSA, through indoctrination, posters, discussions or training, and by prompt response to employee inquiries and complaints.
- f. obtains OPM exceptions to the prohibition on premium pay, as appropriate, for employees assigned to training.

Approved: February 25, 1982

036 Directors of Offices and Regional Administrators:

- a. with the concurrence of the Director, Division of Organization and Personnel, and in accordance with the Basic Requirements (Section 05) of this chapter:
 - (1) establish administrative workweeks and work schedules applicable to part-time employees.
 - (2) establish work schedules for employees regularly assigned to premium pay work (including shift work) and standby duty.
 - (3) approve alternative work schedules for shift workers and other employees whose functions require continuing exceptions to the normal hours of work, when required by operating or employee training needs. The alternative work schedule shall be furnished to the Division of Accounting, (CON).
 - (4) determine whether to apply the first-40-hour workweek to certain employees.
- b. authorize and approve overtime and compensatory time for employees under their jurisdiction, and authorize overtime work for employees from other offices performing overtime work on projects under their assigned functions. This authority may be redelegated, in writing. However, Office Directors should assure that authority to approve overtime and compensatory time is not redelegated below the level of branch chief and is not redelegated so broadly that consistency and control are jeopardized. The names of officials specifically redelegated authority to approve overtime and compensatory time shall be furnished to the Division of Accounting.
- c. authorize and approve work schedule adjustments for religious observance purposes. This authority may be redelegated in writing to the same individuals as described in 036b, above.
- d. determine whether an employee will be denied a work schedule adjustment for the purpose of religious observances (under 5 U.S.C. 5550a). This authority may not be redelegated.
- e. authorize payment for unused religious observance time (at the time of an employee's separation or transfer). This authority may be redelegated.
- f. may request the Director, Office of Administration, to approve alternative work schedules for employees for reasons other than operating, employee training, or religious observance needs.
- g. recommend to the Director, Division of Organization and Personnel, approval of premium pay on an annual basis in lieu of other premium pay in certain situations.

- h. decide whether employees under their jurisdiction may adopt flexitime; establish under flexitime options any fixed work schedule periods (e.g., weekly, biweekly, monthly, etc.); and determine which positions under their jurisdiction are precluded from participation in flexitime. Notify the Director, Division of Organization and Personnel, of flexitime programs in effect, positions precluded from flexitime, and any substantial changes in or termination of a flexitime program. (See Appendix 4136, Part II.D.) (Note: Supervisors of bargaining unit employees are advised to check the negotiated agreement for flexitime policy regarding bargaining unit employees).
- i. determine whether to extend core time under flexitime work schedules, and notify the Director, Division of Organization and Personnel.
- j. assure office coverage during official hours of operation (supervisors of bargaining unit employees use negotiated agreement).
- k. determine holidays for employees who are on a first-40-hour workweek.
- l. establish part-time permanent regular work schedules of less than 16 hours per week, where deemed necessary to carry out the agency mission. This authority may not be redelegated.

037 Supervisors:

- a. shall make every reasonable effort to allow employees who have earned approved compensatory time to schedule that time within the appropriate time period, and to plan for use of that time in coordination with normal planning for annual leave usage.
- b. must exercise special and continuing control over the work of non-exempt employees in their organizations to insure that overtime work is not performed if prior permission has not been given, or if there is no intention of paying for the additional time worked.
- c. see Appendix 4136, Part II.D.4 for special responsibilities under a flexitime program.
- d. endeavor to allow work schedule adjustments for those employees requesting them for the purpose of religious observances.

4136-04 DEFINITIONS (See Appendix 4136, Part I.)

4136-05 BASIC REQUIREMENTS

051 Applicability. This chapter and appendix apply as stated to salaried exempt, nonexempt and locality rate NRC employees. Bargaining unit employees are also governed by the negotiated agreement. Where there is specific conflict or modification by the negotiated agreement, the agreement shall govern.

Approved: February 25, 1982

052 Appendix 4136. Procedures and instructions for carrying out the policy, responsibilities and requirements of this chapter are contained in Appendix 4136.

053 Administrative Workday and Workweek.

- a. The administrative workday for Washington, D. C. metropolitan area employees is the calendar day beginning with 00:01 hours through the next 24:00 hours. The administrative workweek for Washington, D.C. metropolitan area employees is the calendar week of Sunday (00:01 hours) through the next Saturday (24:00 hours). The administrative workday and workweek for the Regions will be the same unless otherwise established under 033 or the negotiated agreement. FPM Supplement 990-2, Book 550, describes conditions when the hours of the administrative workday and the administrative workweek may be modified from the normal either to avoid carrying time over from one administrative workday to the next or to avoid carrying fractional workdays from one week to the next in special cases for standby duty employees.
- b. Alternative work schedules for shift workers and others whose functions or educational needs require continuing exceptions to the normal hours of work will be assigned by Directors of Offices with concurrence of the Director, Division of Organization and Personnel, subject to regulations governing hours of work and premium pay. The assignment of different hours of duty for anyone for any reason other than functional requirements, educational, or religious observance needs must be reviewed and approved by the Director, Office of Administration.
- c. Each employee will be adequately notified, in advance, of the administrative workday and workweek.
- d. Each administrative workday and workweek is considered a unit for pay purposes and must stand by itself with respect to computation of overtime pay to the employee (25 Comp. Gen. 205).

054 Basic Workweek.

- a. The basic workweek for each full-time employee will be a period of 40 hours. Except where a first-40-hour or standby duty workweek has been authorized and except as provided in 058, below, the basic workweek will be :
 - (1) performed within a period of not more than 6 of any 7 consecutive days.
 - (2) regularly scheduled on 5 consecutive specified basic workdays, and where possible:
 - (a) These days will be Monday through Friday.

- (b) The remaining days which are outside the employee's basic workweek will be consecutive; e.g., Saturday and Sunday.
- b. The occurrence of holidays will not affect the designation of an employee's basic workweek.
- c. No authority exists for establishing a basic workweek:
- (1) of other than 40 hours within the administrative workweek for any full-time employee.
 - (2) requiring work on 7 consecutive calendar days within that basic workweek.

055 Basic Workday.

- a. The basic workday for each full-time employee will be a period of 8 hours except where a first-40-hour or standby duty workweek has been authorized.
- b. For full-time employees, the 8 hours in each basic workday will be the same and will be consecutive clock hours, excluding the meal period (except where a first-40-hour, standby, or rotating shift work schedule has been authorized).
- c. NRC special policies and procedures on flexitime are contained in Appendix 4136, Part II.D, and the negotiated agreement.
- d. The official hours of operation for the Nuclear Regulatory Commission in the Washington, D.C., area are Monday through Friday, ~~7:15~~ 7:30 a.m. - ~~5:00~~ 5:15 p.m., which allows a 45-minute meal period for its full-time employees. (For part-time work schedules, see 057, below.)

056 Length of Workday. Normally, for health and safety reasons, no employee will be scheduled to work more than 16 hours per day (8 hours regular, plus 8 hours overtime). Employees may, however, perform duty in excess of 16 hours in a calendar day when unusual operational requirements or emergencies, such as mechanical breakdown, accidents, or unusual weather conditions require such duty.

057 Work Schedules.

- a. Establishing Work Schedules. Office Directors shall document work schedules which deviate from the normal 8-hour work period on SF 52 "Request for Personnel Action," for both full and part-time employees (e.g., first 40-hour workweek, night work schedule, weekend work schedule, work schedule with no meal period). By law, work schedules must be scheduled in advance of the administrative workweek to cover a period of at least one administrative workweek. Each employee, regardless of the type of schedule, is expected to be on duty during the full period of his or her workweek, as assigned, unless on approved leave, excused absence, or absent in a duty status. (See Chapter NRC 4145.)

- b. Rotating Shift. The days and shift hours of the basic workweek of an employee involved in rotational shifts or tours of duty will not be changed without notice to the employee at least two workweeks before such change is effective. Such change will remain in effect for four consecutive weeks or more, except:
- (1) basic workdays and/or shift hours may be changed by NRC during unusual circumstances or emergency conditions; or,
 - (2) the supervisor and employee may agree to a different work schedule, consistent with statutory requirements.
- c. Part-time Schedule. Work schedules for part-time employees will be in whole consecutive hours. Any part-time schedule of 6 hours or more in a workday will be broken by a 45-minute meal-period, except as provided in 058, below, or 032b. Work schedules for newly appointed part-time permanent employees and for employees who became part-time permanent since April 8, 1979, may not exceed 32 regularly scheduled hours per week; and may be scheduled for less than 16 hours per week only if the Office Director deems it necessary to accomplish the agency mission.
- d. First-40-Hour-Workweek. Employees on a first-40-hour workweek are not assigned specific administrative days and hours of work. Each employee is required to be on duty during the full 40 hours of the basic workweek (unless on approved leave, excused absence, or absent in a duty status) within a period of not more than 6 days of the administrative workweek. Supervisors and employees shall exercise care to minimize performance of work at premium pay hours.
- e. Work Schedule Change Involving 50 or More Employees. When proposing changes to the established work schedule affecting 50 or more employees in the Washington, D.C., metropolitan area, the Director, Office of Administration, will obtain the approval of the Commissioner, Public Building Service, General Services Administration, before the proposed schedule is adopted. Generally, the GSA requires NRC to justify changes and to coordinate with the employees' union(s) and/or the affected employees, prior to their coordination with police traffic departments and transportation systems.

058 Exceptions to Regular Work Schedules.

- a. Office Directors may vary work schedules for employees in accordance with 036 and consistent with other basic requirements in this chapter, where it is determined that regular work schedules would:
- (1) be less effective in carrying out certain NRC operations;
 - (2) substantially increase costs;
 - (3) not permit employees to take approved courses for self development purposes in nearby educational institutions at their own expense and on their own time; or

(4) not permit employees time off for religious observance.

- b. Special consideration will be given to establishing work schedules for minors and employees of high-school age in accordance with State labor standards and FPM Chapter 610.1-7.

059 Payment for Overtime Work.

- a. Except as provided in b, c, and d, below, overtime pay at the appropriate rates prescribed by section 5542 of Title 5, U.S.C. (or 5 U.S.C. 5544 for locality rate employees), is authorized (see 4136-036b) for all hours of work officially ordered or approved in advance, and performed by an employee, in excess of 40 hours in an administrative workweek in or excess of 8 hours in an administrative workday, whichever results in the greater number of overtime hours (see Appendix 4136, Part III).
- b. Nonexempt employees, covered by the Fair Labor Standards Act (FLSA), will be paid for all overtime work which was ordered or approved, or was permitted where the supervisor had actual knowledge or reason to believe that overtime work was being performed and had an opportunity to prevent it. Such payments will be either at the rates and amounts provided in a., above (see Appendix 4136, Part III.B.) or at the rates and amounts provided by the FLSA (see Appendix 4136, Part III.C.), whichever is greater. Under the FLSA, "hours worked" are counted differently than are hours worked under Title 5 U.S.C. (see Appendix 4136, Part III.C.).
- c. Compensatory time in lieu of payment for overtime work is authorized, under the conditions outlined in Appendix 4136, Part III.D.
- d. Employees with a first-40-hour workweek (see Appendix 4136, Part II.A.2) who are either engaged in professional or technical engineering or scientific activities, or are paid a basic rate exceeding the minimum rate of GG-10, may be paid overtime only for work in excess of 40 hours in an administrative workweek.

0510 Payment for Night Work. Premium pay is authorized for all regularly scheduled hours of night work at the appropriate rate of differential (either 10 percent of basic pay as prescribed by 5 U.S.C. 5545(a), or administratively determined for locality rate employees in accordance with Appendix 4136, Part IV.D.).

0511 Payment for Sunday Work. Premium pay is authorized, at a rate of differential equal to 25 percent of the employee's basic rate of pay, for any regularly scheduled 8-hour period of service which is not overtime, any part of which is performed within the period commencing on midnight Saturday and ending on midnight Sunday. This also applies to locality rate employees.

0512 Holidays.

- a. **Payment for Federal Holidays Off and Federal Holidays Worked.** NRC observes all legal holidays in the Federal Service. Normally, employees are excused from duty on these holidays without charge to annual

Approved: February 25, 1982

leave or loss of basic pay. Any employee assigned to duty on a holiday within the employee's regular basic workweek is paid for this duty at a rate twice the employee's regular rate of basic pay, for a minimum of two hours. Hours of holiday work performed in excess of 8 hours must be paid at the overtime rate. No compensatory time is allowed in lieu of holiday pay (26 Comp. Gen. 431). However, a requested work schedule adjustment for religious observance purposes may be permitted so that time off may be earned by working on a Federal holiday (see Appendix 4136, Part III.D. for details).

- b. Federal Holidays for Employees on First-40-Hour Workweek (see Appendix 4136, Part VI.G.).
- c. Religious Observance Holidays. A work schedule adjustment may be permitted to allow employees time off for religious observance. An employee may accrue time off for this purpose by requesting work outside his or her regularly scheduled hours or on a Federal holiday. Work performed under this provision is considered a work schedule adjustment. The premium pay provisions for overtime work in Subpart A of part 550 of title 5, Code of Federal Regulations, and section 7 of the Fair Labor Standards Act of 1938, as amended, do not apply to work performed by an employee for this purpose. In the exceptional circumstance where accrued religious observance time has not been used at the time of an employee's transfer or separation from NRC, it will be paid at the basic rate at which earned. Conversely, religious observance time used but not earned at the time of an employee's separation or transfer from NRC will be satisfied by a charge to annual leave or leave without pay (see Appendix Part VI.J.).

0513 Documentation.

- a. Irregular and Occasional Overtime Work. Written justification shall be provided on Form NRC 145, "Request and Authorization for Irregular and Occasional Overtime Work," in sufficient detail to permit review and audit of all reasons for authorizing overtime. When it is impractical to process Form 145 in advance of overtime work, oral prior approval may be given and Form 145 used to confirm the authorization. The completed form shall be submitted with the Time and Attendance report to the Division of Accounting. Overtime and compensatory time shall be recorded on Time and Attendance Report and manually signed and approved by the appropriate authority. (See NRC Chapter 4137, "Time and Attendance Reporting.")
- b. Regularly Scheduled Overtime Work. Regularly scheduled overtime work may be established by duly authorized officials (NRC 4136-036) by memorandum to the affected employees with concurrence of the Director, Division of Organization and Personnel, which specifies the exact days and hours and the purpose of the overtime work. The authorizing official shall forward a copy of the memorandum ordering the overtime work to the Division of Accounting. As worked, the time is to be reported on the T&A Report, using the Regularly Scheduled Overtime Code. (Note: Supervisors of

bargaining unit employees note this may be a change in working conditions.)

- c. Offset for Religious Observance Time. Work which an employee requests to perform for the purpose of taking time off for religious observance is documented on the T&A Report by using the Religious Observance Codes when management approves an employee's request to alter his or her work schedule to permit performance of work outside the normal work hours or on a Federal holiday as an offset to time taken off for religious observance.

0514 Statutory Limitation on Premium Pay

- a. Biweekly Maximum Earning Limitation: Except in b. or c. below, premium pay (including compensatory time or additional pay authorized on an annual basis) can be paid only to the extent that the payment does not cause the total of basic pay or premium pay for any pay period to exceed the maximum rate for grade GG-15, including any applicable geographic or locality-based adjustment or special rate.
 - (1) Therefore, employees paid at or above the GG-15, step 10, rate cannot receive premium pay (including compensatory time), unless an exception in b. or c. below applies.
- b. Law Enforcement Officers (e.g., GG-1811 series (see 5 CFR 550.107): The maximum pay for a pay period (including basic and premium pay) is lesser of:
 - (1) 150% of the minimum rate for GG-15, including applicable geographic or locality-based adjustment, or special salary schedule; or
 - (2) The rate payable for Executive Level V.
- c. Emergency Work: The maximum biweekly earning limitation may be waived during pay periods that employees (not covered by b. above) perform work in connection with conditions posing a direct threat to human life or property.
 - (1) The Director, Office of Personnel, may waive the maximum for any pay period in which an employee performs work in connection with an emergency involving a natural disaster.
 - (2) For work in connection with an emergency other than a natural disaster, the Office of Personnel Management (OPM) may authorize a waiver of the pay period maximum. A waiver request must be submitted to OPM, by or through OP, within 30 days after the beginning of the emergency.
 - (3) Such work must be directly related to resolving or coping with the emergency or its immediate aftermath.

- (4) Annual maximum: Premium pay for emergency work is payable only to the extent that it does not cause the total of basic pay and premium pay for any calendar year to exceed the maximum rate for GG-15 in effect on the last day of the year, including any applicable geographic or locality-based adjustment or special rate.

d. The maximum has no effect on:

- (1) an employee's right to request a work schedule adjustment for religious observance.
- (2) locality rate (e.g., Wage Grade) positions.
- (3) "nonexempt" employee entitlements to overtime under the Fair Labor Standards Act (FLSA).

0515 Minimum Time Unit for Premium Pay. Premium pay work will be directed, or authorized, and paid for normally in units of full hours and one-tenth hours (six minutes). For employees subject to subchapter V of chapter 55 of Title 5, U.S.C., odd minutes (less than six minutes) will be disregarded (44 Comp. Gen. 410). For employees whose overtime work is under the FLSA, all periods of time worked, no matter how small, will be accumulated on a workweek basis, and any remaining irregular, unscheduled overtime work which does not satisfy the full fractions established will be dropped from the workweek; i.e., five minutes or less will be dropped from the workweek.

0516 Premium Pay During Periods of Training.

- a. Entitlements Under Title 5 U.S.C.. Employees who are being given training through Government or non-Government facilities under the provisions of NRC 4150 are, with certain exceptions, prohibited from receiving premium pay under Title 5 U.S.C. 4109 when assigned to training duty. This prohibition applies as well to compensatory time (39 Comp. Gen. 453). Exceptions to the Title 5 U.S.C. 4109 prohibition on payment of premium pay when assigned to training duty are set forth in Federal Personnel Manual Chapter 410, subchapter 6, and in NRC Appendix 4150, "Employee, Management and Executive Development and Training." Overtime pay may be paid for official work performed in addition to 40 hours of inservice training performed in any workweek (41 Comp. Gen. 477), and for time spent traveling either to or from places of training, if in accordance with Appendix 4136, Part VIII.
- b. Entitlements Under the Fair Labor Standards Act (FLSA). Under the FLSA, time spent in training outside regular working hours is considered hours of work if the employee is directed to participate in the training by NRC and the purpose of the training is to improve the employee's performance of the duties and responsibilities of his or her current position (see Exhibit 3 for summary chart, and NRC Appendix 4150 for details).

0517 Daylight Saving Time. NRC will change to and from daylight saving time when the State or county in which the office is located changes time in accordance with law or custom (see Uniform Time Act of 1966, 15 U.S.C. 260a.).

Approved: February 25, 1982 (Revised: 9/25/91)

0518 Scheduling Travel.

- a. To the maximum extent practicable, the time to be spent by an employee of NRC in a travel status away from the official duty station will be scheduled within the employee's regularly scheduled workweek (5 U.S.C. 6101(b)(2) and 46 Comp. Gen. 425).
- b. When an employee is required to travel outside the regularly scheduled workweek under circumstances which make such travel time nonpayable under the provisions of Appendix 4136, Part VIII.B., the official ordering the travel will record the reasons for ordering it at those hours and will furnish the employee a copy of such reasons (see Appendix 1501, Part II.).

0519 Witness Service as Official Duty. An employee is performing official duty during the period when summoned, or assigned, to testify or to produce official records:

- a. in an official capacity on behalf of the United States, the District of Columbia, a State or local government or a private party.
- b. in an unofficial capacity on behalf of the United States or the District of Columbia.

(5 U.S.C. 6322, as amended by P.L. 91-563 and P.L. 94-310.) (See Appendix 4145.) Time involved is payable as basic or premium pay (if otherwise applicable) as appropriate.

0520 Relationship of FLSA Overtime to Other Premium Pay. Although nonexempt employees are paid overtime in the greatest amount available under either the FLSA or other laws (see Appendix 4136, Part III.C.), payments under the FLSA do not affect the employee's premium pay entitlements for matters other than overtime. Nonexempt employees' entitlements to other premium payments will be established and paid as though overtime pay had not been made under the FLSA. Entitlements to overtime pay under the FLSA are based on the concept of "actual hours of work," as defined in the FLSA.

0521 Administration of the FLSA.

- a. **Determination of Status.** Determination of whether an NRC employee has exempt or nonexempt status under the FLSA is made by the Division of Organization and Personnel, after a review of the "duties" portion of the position description. This determination is based on detailed guidance provided by OPM. New employees are advised of their status by letter and by receipt of the employee copy of NRC Form 50, "Notification of Personnel Action." If an employee's FLSA status changes, the initiating Form 50 will reflect that change. Form 772-A, "Position Action and Evaluation," also records exempt or nonexempt status.

- b. Employee Questions. Employees and supervisors may contact the Division of Organization and Personnel if they have questions about designations as exempt or nonexempt, or questions or complaints about the application of the FLSA provisions. Employees are encouraged to seek resolution of problems within NRC. However, employees or third party representatives (any person or organization representing the employee) may pursue complaints directly with the Office of Personnel Management, Agency Compliance and Evaluation, Compliance Branch. The law also establishes the right for an employee to bring a civil action in U.S. District Court either directly or after having received the OPM decision on an FLSA complaint. Each employee requiring information on time limits for filing complaints may contact the Division of Organization and Personnel for current information.

4136-06 REFERENCES.

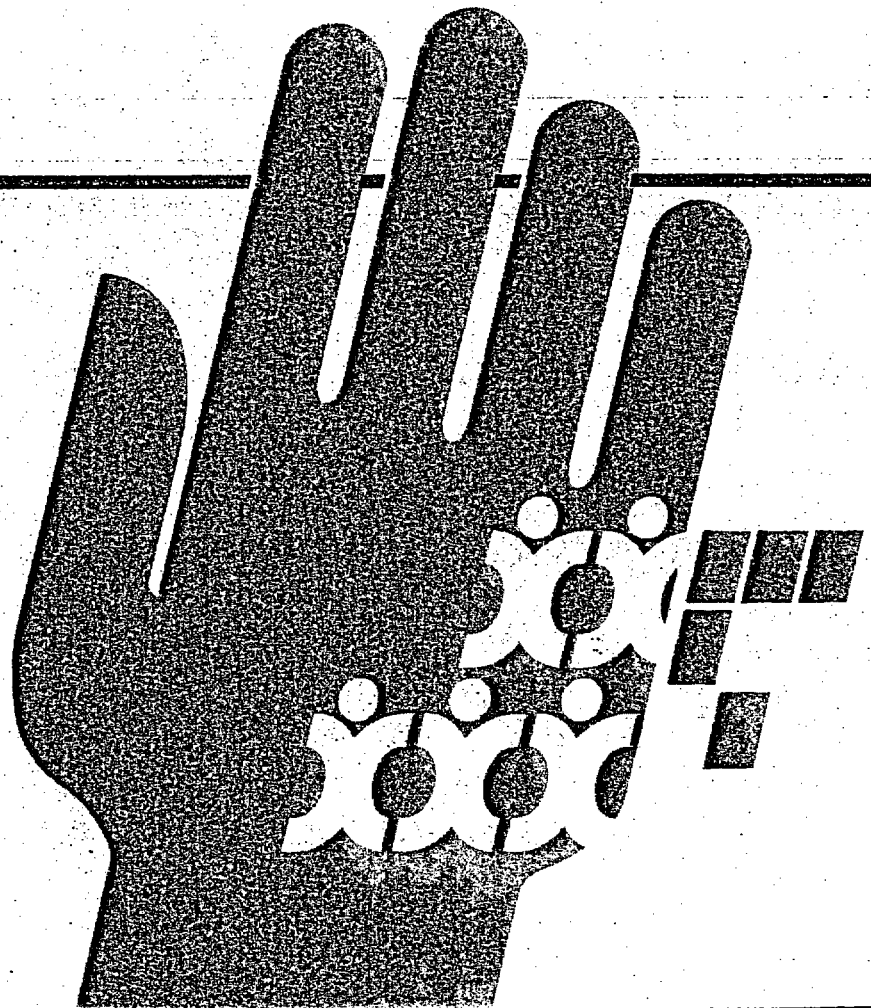
Principal laws and regulations applicable to this chapter and appendix are:

- a. Title 5, United States Code, Chapter 55, Subchapter V - Premium Pay.
- b. Title 5, United States Code, Chapter 61 - Hours of Work.
- c. Fair Labor Standards Act, as amended by Public Law 93-259-April 8, 1974.
- d. Office of Personnel Management Regulations, which appear in Title 5, Code of Federal Regulations, and in Supplement 990-1 of the Federal Personnel Manual:
 - (1) 5 CFR Part 550, subpart A, "Premium Pay."
 - (2) 5 CFR Part 551, subpart A, "Pay Administration Under the Fair Labor Standards Act."
 - (3) 5 CFR Part 610, subpart A, "Weekly and Daily Scheduling of Work," and subpart B, "Holidays."
 - (4) FPM Supplement 532-1, subchapter S8-4, "Night Shift Differential and Premium Pay."
 - (5) FPM Chapter 550, subchapter 1.
 - (6) FPM Chapter 610, subchapters 1 and 2.
 - (7) FPM Supplement 990-2, Book 550, subchapter S1.
 - (8) FPM Supplement 990-2, Book 610, subchapters S1 and S2.
 - (9) FPM Letters and Bulletins implementing policy through the date of this publication.

e. NRC Management Directives:

- (1) NRC Chapter 1501 and Appendix.
- (2) Chapter 4108 and Appendix.
- (3) Appendix 4130-C.
- (4) NRC Chapter 4137 and Appendix.
- (5) NRC Chapter 4145 and Appendix.
- (6) NRC Chapter 4150 and Appendix.

Division of Organization and Personnel **Hours of Work and Premium Pay Handbook**



U. S. NUCLEAR REGULATORY COMMISSION
NRC MANUAL
TRANSMITTAL NOTICE

CHAPTER 4136 HOURS OF WORK AND PREMIUM PAY

SUPERSEDED:

	Number	Date
Chapter	_____	_____
Page	_____	_____
	_____	_____
Appendix	NRC-4136, Part I	2/25/82
	Part X, pgs.1-2	2/25/82

TRANSMITTED:

	Number	Date
TN	4100-96	_____
Chapter	_____	_____
Page	_____	_____
	_____	_____
Appendix	NRC-4136, Part I	12/20/85
	Part X, pgs.1-2	12/20/85

REMARKS:

NRC Appendix 4136 has been revised to reflect recent changes which affected Fair Labor Standards Act (FLSA) provisions and to include a revised NRC Form 707, "Hours of Work Request." Brief descriptions of these changes are listed below. Please insert the new pages to replace the superseded ones.

NRC Appendix 4136 - Part I, 7a. and 7b. has been revised to reflect changes in Title 5, Code of Federal Regulations, Part 551, "Pay Administration Under the Fair Labor Standards Act" (FLSA). The changes implement an assumed status of exempt under FLSA for all employees at GG-11 and above. Employees classified at GG-5 through GG-10 are exempt only if they meet specific OPM exemption criteria. In addition, it is made clear that employees at GG-4 and below are nonexempt. The effective date of these new regulations is November 10, 1985.

NRC Appendix 4136 - Exhibit 2, NRC Form 707, "Hours of Work Request" has been revised and may be used by employees to request supervisory approval for designation of their initial compressed work schedules and subsequent changes to existing compressed work schedules. Time and attendance cards, however, serve as the only approved documentation for indicating CWS for payroll purposes. (Supervisors should also see Article 30 of the Collective Bargaining Agreement).

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PART I

DEFINITIONS

1. Administrative Workday. A period of 24 consecutive clock hours within which the basic workday is scheduled.
2. Administrative Workweek. A period of seven consecutive calendar days, normally beginning with 0001 Sunday and ending with 2400 hours on the following Saturday, within which the basic workweek is scheduled in advance by an authorized official of NRC.
3. Basic Pay. The rate of pay fixed by law or administrative action for application for the position held by an employee before any deductions and exclusive of additional pay of any kind. (For locality rate employees, basic pay includes any night shift differential, and any environmental differential paid in a basic workweek if payable for the last hour of the basic workweek.) Certain exceptions apply to regularly scheduled standby duty employees who receive premium pay on an annual percentage basis.
4. Basic Workday. A period of 8 duty hours during which the employee (other than an employee for whom a first-40-hour or standby workweek has been authorized) is entitled to receive pay at the rate of basic pay.
5. Basic Workweek. For full-time employees, this means the 40-hour workweek (normally, 5 basic workdays) of regularly scheduled work within the administrative workweek. (See requirements for establishment of a basic workweek in Chapter NRC-4136-054.)
6. Compensatory Time. The time off from work given employees instead of overtime pay for irregular or occasional overtime (see Appendix 4136, Part III.D.). Compensatory time, when appropriate, is granted at a rate of one hour compensatory time for each hour spent in irregular or occasional overtime work.
7. Fair Labor Standards Act (FLSA) as amended by P.L. 93-259, April 8, 1974, brings most Federal employees within the purview of the FLSA. Coverage for minimum wage rate and overtime pay depends upon whether the employee is an "exempt" or "nonexempt" category. (See definitions below.) The FLSA, as amended, does not repeal, amend, or otherwise modify any existing Federal pay laws. Rather, the FLSA establishes a minimum standard of compensation to which covered employees are entitled. Application of FLSA principles is determined based on whether the employee's entitlement is governed by the FLSA, Title 5 U.S.C., or by both statutes. Chief differences relate to what constitutes overtime work and limitations on use of compensatory time.
 - a. Exempt Employees. In most general terms, exempt employees are executive, supervisory, administrative and professional employees,

plus foremen level supervisors in the Federal Wage System exempted from FLSA for overtime pay purposes. Employees whose positions are classified at GG-11 or above are exempt unless OPM grants an exception for a specific occupation to be designated nonexempt. OPM procedures for making a request for such an exception are provided in Title 5, Code of Federal Regulations, Part 551.207.

Employees whose positions are classified at GG-5 through GG-10 are exempt only if the employee meets OPM exemption criteria for an executive, administrative or professional employee. In addition to the primary criterion for an executive, administrative or professional employee, employees whose positions are classified at GG-5 or GG-6 must spend 80 percent or more of their worktime in a representative workweek performing supervisory, administrative or professional duties or closely related work.

These employees are covered by subchapter V of Chapter 55 of Title 5, U.S.C., for overtime payments. Implementing regulations and instructions are contained in Title 5, Code of Federal Regulations, Part 551; Book 550, Federal Personnel Manual; supplements in FPM 990 series and as interpreted by NRC Chapter and Appendix 4136.

- b. Nonexempt Employees. Generally, nonexempt employees are secretarial, clerical and other nonsupervisory employees covered by the provisions of the FLSA. Employees whose positions are classified at GG-4 or below are nonexempt. These employees will receive full benefits of wage protection for overtime worked as directed or permitted by supervisors. Implementing regulations and instructions are contained in Title 5, Code of Federal Regulations, Part 551; Federal Personnel Manual Letters in the 551 series and as interpreted by this issuance.
8. First-40-Hour Workweek. A workweek in which the specific days and hours of work within the administrative workweek are not prescribed in advance. In such case, the first 40 hours of required duty performed within a period of not more than six (6) days of the administrative workweek are considered the basic workweek.
9. Flexitime. A system of work scheduling which allows the employee to vary starting and quitting times in the basic workday, in accordance with prescribed procedures.
10. Holiday Work. Work performed on any day designated as a holiday by Federal statute or Executive order.
11. Irregular or Occasional Overtime Work. Overtime work which is not regularly scheduled. Irregular or occasional overtime must be ordered or approved in writing by an official specifically delegated necessary authority. If exempt employees work additional hours which are not specifically officially ordered or approved in advance, these hours do not constitute "overtime" as defined in this Appendix and these hours do not constitute entitlement to overtime pay or compensatory time.

12. Locality Rate Employee. An employee in a job paid in accordance with a schedule of locally prevailing rates. (See Chapter 4130 for definitions of "Locality Rate" and "Locality Rate Schedule.") Such rates will usually be on an hourly basis for nonsupervisory employees and "work leaders," and on an annual basis for supervisory employees.
13. Maximum Step Rate. The highest step rate listed in the range of rates for each grade in a salary schedule.
14. Night Differential. In the case of locality rate employees, the percentage of basic pay, or cents-per-hour flat amount, authorized for night work by the appropriate locality rate schedule of wages. For other eligible employees, the amount representing 10 percent of basic pay authorized for night work by section 5545 of Title 5, U.S.C.
15. Night Work. Work which falls between 6:00 p.m., on any day, and 6:00 a.m. of the following day.
16. Office Directors. Directors of all program and staff offices, and Regional Administrators. Included for the purpose of this chapter and appendix, unless expressly stated otherwise, are the Commissioners, the Executive Director for Operations, and the chairpersons of boards, panels, and committees as regards employees under their supervision.
17. Official Duty Station. The building or other location to which an employee is officially assigned and reports for duty.
18. On-Call-Status. Under the FLSA, "on-call status" refers to a period of non-duty, non-work time.
19. Overtime.
 - a. Exempt Employees. Overtime is officially ordered or approved work performed by an employee in excess of the basic workweek (40 hours) or the basic workday (8 hours). Overtime work may be regularly scheduled as part of a regularly scheduled administrative workweek or occur on an irregular or occasional basis outside the basic or regularly scheduled administrative workweek.
 - b. Nonexempt Employees. (See Appendix 4136, Part III.C.)
20. Part-Time-Employee. An employee who works on a prearranged regular schedule where the hours or days of work are less than the prescribed hours or days of work for full-time employees in the same occupation.
21. Premium Pay. Pay for overtime, night, Sunday, and holiday work, paid in addition to basic pay for salaried employees. Pay for overtime, Sunday, and holiday work for locality rate employees. For General Schedule (GS graded) employees, "premium pay" includes compensatory time, if applicable, in place of actual payment for irregular or occasional overtime, as the time off occurs during payable hours and must be regarded as an alternative method of payment (26 Comp. Gen. 750 and 37 Comp. Gen. 362).

22. Premium Pay on an Annual Basis. Annual rates of premium pay, in percentage form, applicable to salaried employees (for example, firefighters) in lieu of premium pay for:
- regularly scheduled overtime (e.g., employees in a standby status) under specified conditions.
 - irregular or occasional overtime (e.g., employees in administratively uncontrollable work) under specified conditions. (See subchapter 1, FPM Chapter 550.)
23. Regular Overtime Work. Overtime work which is regularly scheduled. Regularly scheduled overtime work is authorized in advance and scheduled to recur on successive days or after specified intervals (48 Comp. Gen. 334). Under 5 U.S.C. 5542, an employee may not earn compensatory time for regularly scheduled overtime work.
24. Regularly Scheduled Administrative Workweek. For full-time employees, the period within an administrative workweek, scheduled in advance, including those periods of overtime work that are regularly required (extended workweek) when these employees are required to be on duty.
25. Religious Observance Work Schedule Adjustment. Time off from an employee's regular tour of duty at the employee's request, for the purpose of religious observance, provided under 5 U.S.C. 5550a. The time off is earned by working outside the regular tour of duty, or on a Federal holiday, and is considered a work schedule adjustment. Premium pay provisions for overtime work in subpart 550 of Title 5, CFR., and section 7 of the Fair Labor Standards Act of 1938, as amended, do not apply for this purpose.
26. Salaried Employee. An employee paid in accordance with the General Schedule or other related pay plans. This term, unless otherwise noted, includes all NRC positions except those paid in accordance with statutory or locality rate provisions.
27. Standby Duty (or Status). Under 5 U.S.C. 5544 (wageboard) and 5545 (salaried) standby duty is a form of compensable work occurring when an employee is not required to devote all time to the actual performance of services but is required to remain at or within the confines of the employee's station to perform such services when called or when the need arises. (See FPM Supplement 990-2, Book 550, for detailed requirements.) Under the FLSA, standby duty refers to a period of duty/worktime when the employee's whereabouts is under the control or direction of the NRC, and the employee's waiting or idle time is for the benefit of the NRC. (See 5 CFR 551 for details.)
28. Sunday Work. For premium pay purposes, work not to exceed 8 hours performed within an employee's basic workweek, any part of which is within the period beginning after midnight Saturday and ending at midnight Sunday.

HOURS OF WORK AND PREMIUM PAY

29. Tour of Duty. The hours of a day (a daily tour of duty) and the days of an administrative workweek (a weekly tour of duty) that are scheduled in advance and during which an employee is required to perform work on a regularly recurring basis.
30. Travel Status. Status of an employee engaged in travel, under official travel orders either for permanent change of station or temporary duty, away from the employee's "Official Station - Post of Duty" as this term is defined in the Federal Travel Regulations and NRC Chapter 1501, "Official Travel."
31. When Actually Employed (WAE) Employee. An employee who performs work on an irregular, occasional, or intermittent basis where the employee is paid only for the time when actually employed or for services actually rendered. (These employees are also referred to as intermittent or irregular employees.)
32. Work Schedule. The specific administrative days and clock hours of duty assigned, in advance, to a particular employee representing the employee's basic, regularly scheduled, part-time, or standby duty workweek.

PART II

WORKWEEKS AND WORK SCHEDULES

A. ESTABLISHMENT OF WORKWEEKS AND WORK SCHEDULES

Workweeks and work schedules will be established showing the days and hours comprising the basic 40-hour workweek, and the days and clock hours of any regularly scheduled overtime. These schedules will be communicated to employees at time of employment.

1. Regularly Scheduled Workweeks. Workweeks and related work schedules will be established for NRC employees as required in Chapter 4136. For most employees, a basic workweek, or an extended workweek including overtime, is appropriate for the duties to be performed. For any approved flexitime program, see Part II., below.
2. First-40-Hour Workweek. Where it is impractical to schedule in advance the specific days and hours of a workweek, a first-40-hour workweek may be established for employees who are either engaged in professional or technical engineering or scientific activities or employees paid at a basic rate exceeding the minimum rate of GG-10. In such cases, the first 40 hours of required duty performed within a period of not more than 6 days of the administrative workweek are considered the basic workweek and the additional hours are considered to be overtime hours. (Work in excess of 8 hours in a day is not overtime for these employees.) The first-40-hour workweek will be prescribed only when the requirements of the workload for a prolonged period of time are such as to require this type of workweek to prevent a substantial increase in costs or remove a serious handicap in carrying out NRC functions. The first-40-hour workweek is considered to be "regularly scheduled" within the meaning of 5 U.S.C. 5545 and 5546. Therefore, employees on a first-40-hour workweek who perform work at these times are entitled to night, Sunday, and holiday premium pay (E.O. 11582 of February 11, 1971, and unpublished Comp. Gen. decision B-162347, dated September 15, 1967). Employees and managers are expected to make every effort to minimize the performance of work at premium hours.
3. Standby Workweek. Employees may be placed on a standby workweek in situations where they are required to remain within the confines of the station for periods of 24 hours to perform services when called or when the need arises, and provisions (and facilities) are made for at least 8 hours to be spent on-site in eating and sleeping. In establishing such a workweek, the number of standby hours on duty as well as the number of hours off duty will be identified. See FPM Chapter 550, Subchapters 1-6, 7 and 8 for further information.

4. Work Schedules for Self-Developmental Educational Purposes. Forty-hour work schedules which vary from the work schedules applicable to most full-time employees of the office concerned may be established for the benefit of employees desiring to take courses in nearby educational institutions at their own expense and on their own time.
 - a. The courses need not be directly related to the employee's official duties but must be taken for the purpose of improving the employee's educational and professional qualifications for employment. Managers and supervisors must insure that such education is in the best interest of the employee, the Government, and NRC.
 - b. Such approved attendance at the educational institution will not be considered as part of the employee's basic workweek and the full-time employee will in all cases be required to perform at least 40 hours of work in each workweek. The 40 hours, however, may be arranged to permit the employee to schedule classes conveniently, to the extent there is no significant impingement on duty performance.
 - c. An employee whose basic workweek is rescheduled for the above approved educational purposes will not be paid premium pay solely because the specified basic workweek established for the employee's benefit results in the person working on a day or a time of day, for which premium pay is otherwise authorized. This provision precludes payment of overtime pay for work in excess of 40 hours in a week (when the excess is the result of the educational program), holiday pay or night work pay. In addition, an employee's workweek will not be varied solely for educational purposes when such variation would result in a schedule of more than 8 hours in a day. The requirement prevents overtime expense that would be incurred for work over 8 hours in a day (Comp. Gen. Decision B-160465, March 9, 1976, unpublished). If an employee, however, in order to attend school, volunteers for, and is assigned to replace another employee or fills a vacancy on a regularly scheduled shift requiring that premium pay be paid to any employee working such shift, the employee will receive that premium pay because the scheduling was not solely for the employee's benefit and there is no additional cost involved.
 - d. This authority may not be used when additional costs for personnel services would result, as for example, having to pay a supervisor overtime to supervise the employee whose work was rescheduled to include hours after normal office working hours, or assigning an additional employee to a premium pay shift.

B. PART-TIME AND INTERMITTENT (WAE) WORK SCHEDULES

1. Work Schedules. The officials designated in Chapter 4136-03 may establish tours of duty with less than 8 hours per day or 40 hours

per week (part-time), or employ persons with no tour of duty but with the understanding that they will serve when called (intermittent or WAE-when actually employed). Work schedules for part-time employees are established in whole, consecutive hours, and will include a 45-minute lunch break when the tour of duty is 6 hours or more per day.

2. Part-Time Permanent. Employees who became part-time permanent on or after April 8, 1979 may not have a regular schedule of less than 16 hours a week nor more than 32 hours per week except as noted below. For flexible or compressed work schedules under 5 U.S.C. 6120 et. seq. part-time career employment consists of 32 to 64 hours during a biweekly pay period. Regular schedules of fewer than 16 hours per week (or 32 hours per pay period for employees under CWS) may be established only with the authorization of the Office Director. This authority may not be redelegated. The Office Director may establish such a schedule only when it is deemed necessary to the accomplishment of the agency mission (P.L. 95-437) (see NRC 4108). (Regular schedules of less than 16 hours per week or 32 hours per pay period under CWS should be established sparingly because the government assumes a larger share of the health insurance contribution.)
3. Self-Developmental Educational Purposes. Work schedules for these part-time employees may also be established to allow for self-developmental educational purposes.

C. CHANGES TO AND FROM DAYLIGHT SAVING TIME

1. The hour lost to an employee on duty during the 8-hour shift in which the change to daylight saving time occurs in the spring, will be covered by a charge of 1 hour against annual (or sick leave, if applicable) in order that the employee may be paid basic pay and any applicable premium pay for all 8 hours. The Comptroller General has held that this one-hour charge to leave need not identify the clock hour charged; should not be paid at a rate which includes Sunday premium pay; and should be paid at a rate which includes night differential (except in the case of a salaried employee whose absence with pay totals 8 or more hours for the pay period.) If no charge is made to leave, such pay may be allowed only for the actual number of hours worked.
2. The hour gained by an employee on duty during the 8-hour shift in which the change to standard time occurs in the autumn will be paid for at the employee's overtime rate, plus any applicable premium pay differentials.
3. In the case of employees with 24-hour tours of duty, no work time is lost or gained and no charge to leave, crediting of overtime, or specific payment for night or Sunday work differentials will be made.

D. LUNCH BREAK (NRC-WIDE)

Employees are required to take their lunch breaks between 11:30 a.m. and 1:00 p.m. (i.e., employees may not begin the lunch break earlier than 11:30 a.m. and may not end the lunch break after 1:00 p.m.), except with the supervisor's prior approval on a case-by-case basis.

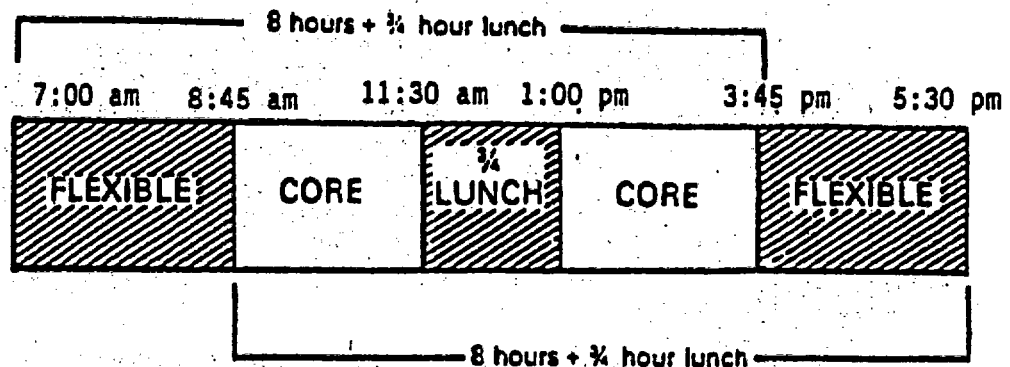
E. FLEXITIME PROGRAM (Note: Bargaining unit employees are also subject to the negotiated agreement.)

1. Scope.

- a. Flexitime will be available to employees in Offices where Directors allow such a program for individuals under their jurisdiction.
- b. No Office shall be required to participate in the flexitime program. Office Directors participating in flexitime shall ensure office coverage during official hours (also see the negotiated agreement).
- c. Employees in certain designated positions may be precluded from participation in flexitime if the nature of their jobs requires their attendance during the basic workday and workweek. See 6 below.
- d. No NRC employee shall be directed to work a flexitime schedule in order to accommodate individuals on flexitime if he/she prefers to work from 7:30 a.m. to 4:15 p.m.

2. Definitions.

- a. The Flexitime system of work scheduling splits the workday into two distinct kinds of time in order to permit employees an opportunity to vary starting and quitting times in the employee's daily tour of duty. The two kinds of time are core time and flexible time.
- b. Core time is the part of the day during which all employees must be present or on approved leave, compensatory time, excused absence, or absence in a duty status. NRC core time in Headquarters is established at 8:45 a.m. to 3:45 p.m. At the discretion of the Office Director, the core time may be extended to provide for adequate office coverage or to meet office workload needs.



- c. Flexible Time is the part of the day during which the employee has the option to select and/or vary starting and quitting times. NRC flexible time is established as 7:00 a.m. to 5:30 p.m. (The full-time employee must complete an 8-hour day plus a noncompensated meal period prior to quitting for the day, unless leave is requested and granted.)

The core time is 7 hours (including a 3/4-hour meal period). Flexible time bands extend on either side of the core. An employee, therefore, might come to work at 7:00 a.m. and leave as early as 3:45 p.m. Alternatively, the employee may begin at any other time between 7:00 and 8:45 with his/her departure 8-3/4 hours later.

- d. Types of Flexitime allowed in NRC (supervisors of bargaining unit employees should see the negotiated agreement).

- (1) Gliding Schedule: A type of flexitime in which selected arrival and departure times may vary daily without prior notification or approval of the supervisor. (See 9 below for timekeeping procedures required.)
- (2) Flexitour: A type of flexitime in which selected arrival and departure times are fixed for certain periods (e.g., week, month, or quarter) with provision for changing selected arrival time upon notice and approval by supervisor normally at the end of the fixed period. Under this option, the employee must work his/her selected work schedule for a fixed period (e.g., two weeks). His/her schedule cannot be changed during this period.
- (3) Modified Flexitour: A subtype of the flexitour option in which selected arrival and departure times may be changed on a day's notice with prior notification and approval by the supervisor. Under this option, the employee selects a particular work schedule (e.g., 7:00 a.m. to 3:45 p.m.) but with notice to and approval of his/her supervisor may alter his/her work schedule (e.g., 8:45 a.m. to 5:30 p.m.) for a day or longer as necessary.

3. Part-time Employees. Different core time bands may be used for part-time employees than for full-time employees. The core time for part-time employees can be scheduled by supervisors according to operational needs of the office. (In order to establish eligibility for leave under the law, it is necessary that some of the part-time employee's work hours be regularly scheduled. Any definite day, or hour of any day, prescribed for the part-time employee to work regularly, subjects the employee to the leave law, even though part of the administrative workweek is served on intermittent duty.)
4. Responsibilities.
 - a. Office Directors' responsibilities under flexitime are stated in NRC 4136-036 h and i.
 - b. The Director, Office of Personnel (OP), coordinates, monitors, and evaluates the agency flexitime program.
 - c. Supervisors:
 - (1) recommend to Office Directors positions to be excluded from flexitime;
 - (2) approve, under flexitour options, employee work schedules and work schedule changes.
 - d. Employees:
 - (1) report accurately their hours worked for time and attendance purposes.
 - (2) shall be present during core time, and work the 8-hour day (if full-time employees) prior to leaving each day.
5. Steps to Implement Flexitime. Each Office Director may select the particular type(s) of flexitime preferred (see the negotiated agreement for bargaining unit employees), if any, and identify any positions to be excluded from flexitime. Positions to be excluded from flexitime must be identified prior to initiating a flexitime program. In determining such excluded positions:
 - a. review the peak workload periods, operating requirements, organizational mission of the unit, considering such factors as service to the public, need to contact time zones, need for coverage during the normal workday (7:30 a.m. to 4:15 p.m.) and any other relevant factors.
 - b. allow flexitime based on requirements of the particular position, not based on the habits of the supervisor.

- c. assure consistency and equitable treatment for similar positions. For instance, if some secretaries are permitted flexitime, then all secretaries should be allowed flexitime, unless there is a persuasive reason for denying flexitime in a particular case. (See negotiated agreement.)
 - d. notify the Office of Personnel (OP) of the type of flexitime to be permitted and provide a list of excluded positions. OP will review the list and contact the Office if there are any questions about the precluded positions. The Office Director shall assure the list is kept current.
6. Special Job Requirements Not Permitting Flexitime. Employees in jobs which must be performed at a particular time, such as receptionist, public document room librarian and switchboard operator may be required to be present during the normal work hours from 7:30 a.m. to 4:15 p.m., and may be excluded from flexitime. Similarly, employees participating as part of a group that travels to an inspection site or working at a remote location may be required to work at a designated time and may not be able to take advantage of flexitime. Further, if flexitime interferes with getting the job done and when there is a heavy workload, employees may be unable to choose their own schedules.

Employee cross-training (on-the-job training) or learning about the work of associates, to cover a job outside of core time, may be possible and beneficial to both employees and management. However, any upgrading of skills or temporary assumption of a more responsible position for limited periods in the workday, to accommodate an employee's desire to participate in flexitime, may not be used to justify changes in position descriptions or promotion.

7. Guidance for Supervisors. In offices where flexitime is implemented, NRC Form 708, "Flexitime Work Schedule" (Exhibit 1), may be used for planning purposes. By showing the hours of work of every employee in a unit, the form can help in planning work and insuring adequate office coverage. The supervisor considers the time the office needs to be covered, based on the type of work performed. Under flexitime, supervisors should not require that employees be available outside of core time unless there is extensive public contact or there are special job requirements. Therefore, meetings should be scheduled, insofar as possible, during core hours. However, a supervisor may direct an employee to vary his/her reporting time for a period of one day or longer upon adequate notice when the needs of the office require it. Normally, this authority should be used only in rare instances. (Supervisors of bargaining unit employees should also see the negotiated agreement.)

Since supervisors will not be available to subordinates during part of an extended workday, management must do a thorough job of planning and scheduling work. Supervisors may have to reevaluate the methods they use for insuring that work is accomplished. For

example, supervisors may want to limit dictation to core hours with secretaries typing during their flexible hours. Both supervisors and employees will have to organize assignments so that they can work alone productively during the flexible hours either before or after core time without need for communication with other employees or guidance from supervisors.

8. Hours of Work Request. In offices where flexitime is implemented, the "Hours of Work Request," NRC Form 707 (Exhibit 2), may be used for individual requests for new or revised hours of work (supervisors should also see the negotiated agreement).
9. Time and Attendance. Existing agency policy and procedures for recording and reporting time and attendance are contained in NRC Chapter 4137. These regulations are not affected by flexitime. Flexitime will require some new procedures for effective internal management control, as follows:

Offices selecting the Gliding Schedule Flexitime option (as defined in 2.d, above) are required to use sign-in/out logs for employees to record hours worked to complete the tour of duty. NRC Form 703, "Sign-In/Out Log for Flexitime" (as shown in Exhibit 3), may be obtained from the NRC Warehouse or supply rooms. Each employee will normally sign in and out on the log. Only supervisors will be allowed to sign the log in the employee's absence. The purpose for sign-in/out logs is to document that the employee works the required hours each day.

The logs should be considered as transitory notes to aid supervisors with certification of employees' time and attendance. Therefore, sign-in/out logs should not be retained beyond the time period covered.

If flexitime based on a fixed tour of duty is adopted (i.e., the Flexitour or Modified Flexitour options as defined in 2.d, above), the use of sign-in/out logs is optional. However, under the Flexitour and Modified Flexitour options, employees are required to have their scheduled working hours approved and confirmed in writing by their immediate supervisors or designees. Employees requesting work schedule changes should request and receive approvals in writing from their immediate supervisors or designees (NRC Form 707, "Hours of Work Request," Exhibit 2, may be used for this purpose). It is important that each employee and supervisor clearly understand the employee's scheduled working hours to prevent misunderstandings. A master schedule of employee hours under these options may be maintained by the supervisor (see Exhibit 1).

10. Leave and Overtime. Flexitime does not affect an employee's right to annual or sick leave, during either core time or flexible time, nor a supervisor's authority to approve the scheduling of leave. However, flexitime work hours provide opportunities for employees

to schedule appointments during flexible time to conserve annual and sick leave.

Under NRC flexitime the workday must be completed in one shift broken only by the meal period. Thus, an employee is not allowed to begin work at 7:15 a.m., leave at 8:15 a.m., and come back during core time and work until 5:15 p.m., without charge to leave. Further, an employee cannot take an extra hour during that day, without charge to leave, since NRC flexitime does not include flexible time during the middle of the day. However, an employee may come to work at noon and work until 5:00 p.m. without a lunch break, and use only three hours of leave. Existing regulations for authorization, approval and reporting of overtime are not affected by flexitime.

11. Energy Conservation. All employees on flexitime are informed that no additional hours of heating, ventilating and air conditioning will be provided in any NRC building location than are now provided. Employees working before 8:15 a.m. or after 5:00 p.m., may find the HVAC shut down or curtailed.

F. COMPRESSED WORK SCHEDULE (CWS)

The only type of CWS allowed in NRC is the 5-4/9 plan: eight 9-hour days, one 8-hour Friday and one Friday off in a pay period. For employees participating in CWS, certain premium pay and scheduling provisions of Title 5 U.S.C. and overtime pay provisions of the Fair Labor Standards Act have been modified, as specified in P.L. 97-221. (All current provisions of Title 5 and the FLSA remain in effect for non-participants.) In any aspect of pay, entitlements, leave, travel, etc., under CWS not covered by the Agreement or NRC directives, applicable government-wide regulations and Federal Personnel Manual issuances apply. Time and attendance cards serve as the only approved documentation for indicating CWS for payroll purposes.

1. Bargaining unit employees are covered by Article 30 of the Collective Bargaining Agreement.
2. Non-bargaining unit employees are excluded from participation in CWS unless granted specific approval to participate by the Executive Director for Operations (EDO) or designee. The EDO decision is final and nongrievable.

Office Directors and Regional Administrators may recommend EDO approval for a CWS for a nonbargaining unit employee, or a group of such employees under their jurisdiction.

In any recommendations, Office Directors and Regional Administrators shall indicate consideration of the following factors to assure there will be no significant adverse impact on:

- a. meeting NRC's operational and mission requirements
- b. meeting NRC's responsibilities to the public and to licensees
- c. providing office coverage
- d. providing supervisory coverage
- e. conducting business with individuals in other time zones
- f. handling regular and peak workloads
- g. providing consistency and equitable treatment for similar positions to the extent feasible.

Generally offices will schedule any nonbargaining unit employees approved for a CWS for 3-month fixed terms. Upon EDO approval Office Directors shall notify affected employees in writing. Such employees may commence the approved CWS at the beginning of the next pay period. Any subsequent changes to a CWS schedule must commence at the beginning of a pay period.

3. Premium Pay

- a. Overtime Pay. Work performed outside a full or part-time employee's compressed work schedule and in excess of the scheduled hours in a day or 80 hours in a biweekly pay period is overtime work. Employee is entitled to overtime pay for overtime work in accordance with applicable provisions of law.
- b. Compensatory Time. The regulations on requesting compensatory time in lieu of overtime pay for occasional and irregular overtime are not changed under CWS for either full or part-time employees.
- c. Night Differential. A full or part-time employee is entitled to night differential for scheduled work performed between the hours of 6 p.m. and 6 a.m., including night work resulting from a temporary change in a tour of duty. Night differential is not payable for work performed at night while on irregular or occasional overtime.
- d. Holiday Pay. A full-time employee who performs regularly scheduled, nonovertime work on a holiday (or a day designated as the "in lieu of" holiday, see 4.d below) is entitled to premium pay for that holiday work at the rate of basic pay plus premium pay at a rate equal to such basic pay, not to exceed the number of hours in the CWS for that day. A part-time employee is entitled to holiday premium pay only for work performed during his/her compressed work schedule on a holiday; and is not entitled to holiday premium pay for work performed on a day designated as an "in lieu of" holiday.

- e. Sunday Pay. A full-time employee who performs regularly scheduled, nonovertime work during a period of service, a part of which is performed on Sunday, is entitled to the rate of basic pay plus a rate equal to 25 percent of basic pay rate for that entire period of service. A part-time employee is not entitled to Sunday premium pay.

4. Absence and Leave Under Compressed Work Schedule.

Statutory provisions of Title 5 relating to military and funeral leave, etc., in some cases have as a frame of reference the 8-hour day with the result that the provisions are stated in terms of "days." Such references to a day or workday (or to multiples or parts thereof) shall be considered to be references to 8 hours (or the respective multiples or parts thereof). CWS is not intended to either decrease or increase any employee's existing entitlement to leave or creditable service for retirement purposes.

- a. Annual and Sick Leave. Time off approved during an employee's basic work requirement (or regular schedule, for part-time employees) must be charged to the appropriate leave category unless the employee is authorized compensatory time off, excused absence, or absence in a duty status. For example, an employee who takes 1 day of annual leave will be charged leave for the number of hours scheduled for that day (for full-time employees, either 8 or 9 hours). For full-time employees, this results in 80 hours of annual leave for an entire biweekly pay period, the same as a full-time employee on a normal 8-hour, 10-day tour of duty.
- b. Court Leave. The scheduled hours (i.e., up to 9) may be granted as court leave unless the employee is excused by the court for that day or a substantial part of that day. (Also see Appendix 4145, Part VI.)
- c. Excused Absences. The amount of excused absence to be granted shall be based on the work hours scheduled for the employee for the period of the excused absence (e.g., if the office is closed for an entire day, 9 hours excused absence for employees scheduled to work 9 hours that day).
- d. Holidays. A full-time employee who is relieved or prevented from working on a day designated as a holiday is entitled to pay for the number of hours scheduled for work that day. When a holiday falls on the Friday which is a full-time employee's scheduled non-work day, the preceeding Thursday shall be designated the employee's holiday. However, part-time employees do not receive a holiday in lieu of one that falls on the day they were not scheduled to work. If a holiday falls on a day during a part-time employee's compressed work schedule, the employee receives pay for the number of hours scheduled for work that day.

5. Review of CWS

By law (5 U.S.C. 6131), if the head of the agency finds that the flexible or CWS has had or would have an adverse agency impact, the agency shall promptly determine not to continue such schedule. Adverse agency impact is defined as: (a) a reduction of the productivity of the agency; (b) a diminished level of services furnished to the public by the agency; or (c) an increase in the cost of agency operations (other than a reasonable administrative cost relating to the process of establishing the program).

PART III

OVERTIME

(See bargaining agreement for Bargaining Unit Employees)

A. USE OF OVERTIME

1. Control of Overtime. Directors of Offices are expected, as a matter of good management and efficiency, to make every effort to minimize overtime and to establish necessary controls over its authorization.
 - a. Irregular or occasional overtime may be required of any employee for validly urgent work of temporary duration.
 - b. Regularly scheduled overtime may be authorized when there is a predictable and continuing need for essential services which cannot be met as feasibly or economically by augmenting the regular staff by detail, additional recruiting, or rescheduling basic tours of duty to cover periods outside normal hours.
 - c. In requiring overtime, consideration will be given to the effect of such additional work on the health and efficiency of the employee.
 - d. Supervisors requesting irregular and occasional overtime work of employees outside their immediate area of supervision:
 - (1) The requesting supervisor must determine if the employee wishes to be compensated by pay or compensatory time. If the employee desires compensatory time in lieu of payment, the requesting supervisor so informs the supervisor of record.
 - (2) The requesting supervisor obtains approval or disapproval from the supervisor of record prior to the performance of all overtime work. The supervisor of record may disapprove only on the basis of operating need.
 - (3) If the work is performed, the requesting supervisor shall furnish the supervisor of record a copy of the NRC Form 145 with an "Actual Hours Worked" notation to be used for T&A recording purposes. Both supervisors shall sign NRC Form 145 "Request and Authorization for Irregular and Occasional Overtime," (see Exhibit 4).
2. Authorization of Overtime.
 - a. Regularly scheduled overtime is authorized, by an official specifically delegated the necessary authority with the con-

currence of the Director, Division of Organization and Personnel, by way of a memorandum to affected employees with a copy to the Division of Accounting. Explanation of the need for the regularly scheduled overtime will be included in the memorandum. (Note: Supervisors of bargaining unit employees should note this may constitute a change in working conditions.)

- b. Authorization of irregular or occasional overtime, or confirmation of prior oral authorization, by an official specifically delegated necessary authority (whether such overtime is to be paid in cash or through compensatory time) will be in writing and the record will include a specific and concise written statement explaining or justifying the need for such overtime and substantiating its urgent character. Form NRC 145, "Request and Authorization for Irregular and Occasional Overtime," will be used for this purpose. (See Exhibit 4.)

- (1) If exempt employees work additional hours which are not specifically officially ordered or approved in advance, these hours do not constitute "overtime" as defined in this Appendix and these hours do not constitute entitlement to overtime pay or compensatory time.

- (2) If nonexempt employees work additional hours which Management "suffers or permits" (i.e., the supervisor has knowledge of the work and has had an opportunity to prevent the work from being performed), even if such time is not approved, the employees are entitled to compensation for overtime, under the Fair Labor Standards Act.

- c. See Chapter 4137, "Time and Attendance Reporting," for payroll overtime reporting requirements.

B. OVERTIME PAY UNDER SECTION 5542 OF TITLE 5, UNITED STATES CODE

- 1. Full-Time Exempt Employees. By statute (5 U.S.C. 5542) overtime is time worked in excess of 40 hours in the administrative workweek, or (with the exception of employees for whom the first 40 hours in the administrative workweek is the basic workweek) in excess of 8 hours in a day.

- a. Except as otherwise provided by statute (such as for locality rate or regular standby duty employees), exempt employees whether on permanent or temporary appointment:

- (1) will be paid for irregular or occasional overtime they are required to perform, unless their specific request for compensatory time in lieu of overtime pay is approved. (See D. below.) (Supervisors of bargaining unit employees are reminded to comply with the bargaining agreement.)

- (2) must be paid for regularly scheduled overtime and may not receive compensatory time in lieu of pay (5 U.S.C. 5542 and 5543).
- b. No overtime pay (or any other premium pay) is payable when it would cause the employee's total pay for any pay period to exceed a statutory maximum. [Except as discussed at NRC 4136-0514, the maximum is the biweekly rate for the top step of GG-15.]
2. Part-Time and Intermittent (WAE) Employees are entitled to overtime pay for hours worked in excess of 8 per day or in excess of 40 per week. In the case of a part-time employee on a compressed schedule, overtime pay shall begin to be paid after the same number of workhours a full-time employee would begin to receive overtime pay.
3. Overtime Rates. Overtime rates are computed at one and one-half times the hourly rate of basic pay (see the OPM Salary Table), up to the applicable statutory maximum as follows:
- a. One and one-half times the minimum hourly rate for grade GG-10 including any applicable geographic adjustment, locality-based payment, or special rate, unless b., below, applies.
- b. For law enforcement officers (e.g., GG-1811 series [see 5 CFR 550.107]) whose basic pay is at a rate which exceeds the minimum rate of basic pay for a GG-10, including any applicable locality based comparability payment and any applicable special rate, the overtime rate is the greater of a., above, or the hourly rate of basic pay of the employee. (See FEPCA 410.)
4. Minimum Time Units. Overtime will be directed or authorized and paid for in units as prescribed in NRC 4136-515.
5. Independent Computations. Each administrative workweek and basic workday will be regarded as a separate and distinct unit for computing overtime. Except with regard to compensatory time, no authority exists for crediting hours worked in a given day or week to any subsequent day or week, or for averaging hours of work over a number of days or weeks, for the purpose of reducing overtime payments (25 Comp. Gen. 205).
6. Special Overtime Pay Considerations.
- a. Leave With Pay. Absence from duty on authorized leave with pay, during the time when an employee would otherwise have been required to be on duty during the basic workweek (including authorized absence on legal holidays, nonworkdays established by Executive or administrative order, and days when the employee uses compensatory time) will be considered to be employment and will not have the effect of reducing the amount of overtime pay to which the employee may be entitled during an administrative workday or workweek, even though the employee may thereby have less than 8 hours of actual duty that day or 40 hours of actual duty that week. Except in the case of military leave, however,

the employee may not be paid for any regularly scheduled overtime not worked because of such absence from duty (45 Comp. Gen. 358).

b. Nonpay Status.

- (1) The period of absence from duty in a nonpay status within an employee's basic workweek will be made up by an equal number of hours of work outside the basic workweek but within the same administrative workweek, and paid for at the rate applicable to the employee's basic workweek before any additional periods of service within the same administrative workweek can be paid for at the overtime rate.
- (2) Similarly, for a period of leave without pay during an employee's basic workday, an equal period of service performed outside the basic workday, but within the same administrative workday, will be substituted and paid for at the rate applicable to the employee's basic workday before any remaining period of service may be paid for at the overtime rate on the basis that it exceeds 8 hours in a workday.

c. Absence During Extended Workweek (Regularly Scheduled Overtime).

- (1) An employee must perform duty during an overtime period to receive payment (40 Comp. Gen. 379, 42 Comp. Gen. 195, and 46 Comp. Gen. 217) except:
 - (a) when absence is expressly authorized by law as in the case of jury or witness service (5 U.S.C. 6322); military leave (5 U.S.C. 6323); leave for a veteran to attend certain military funeral services (5 U.S.C. 6321) (29 Comp. Gen. 427); or leave of an employee in connection with funerals of immediate relatives in the Armed Forces (5 U.S.C. 6326); or
 - (b) when the employee is in an official travel status, and, although not performing actual duty during a regularly scheduled overtime period, the travel falls within a regularly scheduled workweek, or is carried out under any one of the conditions specified in Appendix 4136, Part VIII.C., below.
- (2) Although an employee may not be granted compensatory time for regularly scheduled overtime work, it is possible to grant an employee on an extended workweek use of compensatory time (in lieu of pay for irregular or occasional overtime work) during the basic or extended workweek. If regularly scheduled overtime hours are selected, the time during which the employee is using compensatory time will be counted when computing the employee's overtime pay for that extended workweek.

d. Night, Sunday, and Holiday Work will be counted in determining for overtime pay purposes the total number of hours of paid employment within the same administrative workweek. Only the basic salary rate, however, will be used in computing overtime pay under this part.

e. Minimum Pay for Call-back Overtime.

- (1) An employee who is called in to perform less than 2 hours of unscheduled (irregular or occasional) overtime on a day when no work is regularly scheduled, or who, after completion of a basic workday or scheduled overtime, is required to return to the place of employment for a period of duty of less than 2 hours, will be considered to be in a duty status for 2 hours for purposes of computing overtime pay, or granting compensatory time in lieu of overtime pay. This provision will not apply to employees with a standby workweek when called to actual duty during regularly scheduled hours.
- (2) Call-back overtime applies regardless of whether or not actual work is performed (40 Comp. Gen. 379).
- (3) Employees called back more than once during the same 2-hour period are entitled to call-back overtime for each time (35 Comp. Gen. 448).
- (4) When the call-back occurs before the regularly scheduled start of work, the "2-hour minimum payment" rule applies only where the call-back is clearly distinguishable from a call simply to begin work at an earlier hour than scheduled which is appended to the beginning of the scheduled workday without break. (For example, an employee called in at 7:00 a.m. on a workday scheduled to start at 8:00 a.m., and who remains at work for the remainder of the workday is entitled to only 1 hour of overtime which is the first of the nine hours involved (45 Comp. Gen. 53).) Similarly, employees who perform unscheduled overtime work immediately following a regularly scheduled tour of duty are not entitled to minimum pay for call-back overtime.

f. Standby Duty.

- (1) Employees who perform standby overtime duty (see Appendix Part I, definition 26), in which the employees are confined to their designated stations and in which no time is allowed for eating and sleeping, will be paid for all such duty at the overtime rate.
- (2) An employee performing "duty officer" assignments at hours outside the basic 40-hour workweek is entitled to overtime pay for the hours during which the employee is

confined to a designated station, but is not entitled to overtime pay for any time during which the employee is not required to remain within the confines of the station although required to be reachable by telephone or other means of communication. (During such periods, the employee's mobility is somewhat restricted but the time spent is predominantly for the employee's benefit.) (See Comp. Gen. Decision B-156739 of June 22, 1965, unpublished.)

- (a) Overtime duty officer assignments will be made by an official of NRC authorized to grant or approve overtime work.
- (b) No payment will be made for any time reserved for eating or resting during the duty officer period.
- (3) Locality rate employees who perform standby duties in excess of 8 hours per day will be paid overtime rates only for the hours of standby duty (exclusive of eating and sleeping time) in excess of 40 hours per week (42 Comp. Gen. 195).

C. OVERTIME UNDER THE FAIR LABOR STANDARDS ACT (FLSA) (See 5 CFR 551)

The FLSA was extended to cover the Federal Service by Public Law 93-259, effective May 1, 1974. PL 93-259 acted to superimpose the FLSA requirements on top of the statutory and regulatory pay rules already existing in the Federal Service insofar as overtime pay and compensatory time are concerned. For overtime purposes, nonexempt employees (those covered by the FLSA) may be covered by two laws, the Fair Labor Standards Act and Title 5 U.S.C. 5542. Exempt employees are not covered by the FLSA.

The FLSA does not affect premium pay other than overtime. Where the FLSA and other statutes are not consistent, nonexempt employees will receive the greater benefit. A nonexempt employee whose overtime entitlement is solely under Title 5 U.S.C. 5542 will be treated as an exempt employee subject to all the stipulations and provisions of B., above. Differences in the results of these two overtime computation systems are resolved by requiring that affected employees' hours of work at their regular rate of pay be computed under both systems with the employees being paid under whichever system yields the greater benefit. Exempt employees and nonexempt employees whose overtime entitlement is solely under Title 5 U.S.C. 5542 will have their overtime benefits computed in accordance with B., above. The remaining salaried, non-exempt employees will have their FLSA overtime benefits computed under the rules stated below. (See 5 CFR 551 for coverage and implementing OPM regulations. Each employee's status is noted on his or her SF-50, "Notification of Personnel Action.")

1. Hours Worked. The basic rule is that "hours worked" (as defined under FLSA regulations) includes all the time an employee is required or "suffered or permitted" to work, and waiting or idle time which is under the control of the agency and which is for the benefit of the agency (see 5 CFR Part 551). More specifically:
 - a. Except as in v. below, approved absences with pay (holidays, sick, annual, or other paid leave) are not "hours worked."
 - b. Meal periods designated in the work schedule are not considered "hours worked" where the employee is freed from duty (though not necessarily free to leave the premises) for the purpose of eating. If meal periods are frequently interrupted, however, by calls to duty, the periods must be counted as "hours worked."
 - c. Time spent traveling away from the official duty station (but not other time in travel status) is "hours worked" when it cuts across normal duty hours on workdays or nonworkdays. Thus, if an employee regularly works from 8:15 a.m. to 5:00 p.m. Monday through Friday, time spent traveling during these hours on any day of the week is "hours worked." Where travel involves two or more time zones, the time from the zone of first departure in the workday will govern this determination. However, it is not intended that employees be compensated for the time spent in normal home-to-work travel (FPM Ltr. 551-11).
 - d. Time spent traveling away from the official duty station and outside normal duty hours (but not other travel status time) is counted as "hours worked" if the employee (1) travels as a passenger to a temporary duty station and returns the same day, or (2) performs work while traveling. Among other situations, employees are considered to have performed work while traveling if they are required to drive or pilot the transporting vehicle. Where there are alternating drivers or pilots, each will be considered working to the extent of his/her driving or piloting. Where an employee is required to be on duty (traveling continuously) for 24 hours or more, authorized sleeping periods of not more than 8 hours may be deducted if adequate sleeping facilities are aboard. If the sleeping period is interrupted by a call to duty, the interruption is counted as "hours worked," or if there is not more than 5 hours of uninterrupted sleep time, the entire period is "hours worked."
 - e. All time spent driving a Government vehicle from home to work and return is "hours worked" where such driving is required by NRC to transport other employees or to facilitate response to emergency calls from residence.
 - f. If an employee drives a passenger vehicle outside regular working hours (including outside corresponding hours on a

nonworkday) directly from home to a temporary duty station, the employee shall only have counted as "hours of work" the time spent driving which is in excess of normal home-to-work travel. (For additional information on travel as a driver of a passenger vehicle to a temporary duty station as "hours of work" under FLSA, see FPM Ltr. 511-11.)

- g. Time spent traveling from a residence to a temporary duty station outside the limits of the official duty station (corporate limits of the city in which stationed) and outside regular working hours, in response to an emergency call, is "hours worked." Such travel time within the limits of the official duty station (corporate city limits) would not be "hours worked." (See FPM Ltr. 551-10.)
- h. Time after reporting to a designated meeting place, to drive others to a job site or to ride as a passenger to a job site after picking up tools or instructions, is counted as "hours worked."
- i. Where an employee for personal reasons utilizes a mode, route, or time of travel other than that designated by NRC, the employee will be credited as "hours worked" with the lesser of (1) that portion of the actual travel time which is to be considered as working time under the above instructions, or (2) that portion of the estimated travel time which would have been considered working time had the employee utilized the mode, route, or time designated.
- j. A preparatory or concluding activity that is closely related to the principal activity, and is indispensable to its performance, is an integral part of the principal activity and is, therefore, a part of the workday and is considered "hours worked."
- k. A preparatory or concluding activity that is not an integral part of the performance of the principal activity is not a part of the workday. Such an activity is a preliminary or postliminary activity and is not considered "hours worked."
- l. Time spent at lecture, meeting or conference is considered hours of work if attendance is:
 - (1) During an employee's regular working hours; or
 - (2) Outside an employee's regular working hours, and:
 - (a) The employee is directed by an agency to attend such an event; or
 - (b) The employee performs work for the benefit of the agency during such attendance.

- m. Time spent in training is "hours worked" in some instances. (See Chapter NRC-4150 for details. For a summary chart of entitlements, see Exhibit 5.)
- n. Time spent by an employee adjusting his or her grievance (or any appealable action) with an agency during the time the employee is required to be on the agency's premises is "hours worked."
- o. "Official time" granted an employee by an agency to perform representational functions during those hours when the employee is otherwise in a duty status is "hours worked." This includes time spent by an employee performing such functions during regular working hours (including regularly scheduled overtime hours), or during a period of irregular, or occasional overtime work, provided an event arises incident to representational functions that must be dealt with during the irregular or occasional overtime period.
- p. Time spent waiting for and receiving medical attention for illness or injury is "hours worked" if:
 - (1) The medical attention is required on a workday an employee reported for duty and subsequently became ill or was injured;
 - (2) The time spent receiving medical attention occurs during the employee's regular working hours; and
 - (3) The employee receives the medical attention on the agency's premises, or at the direction of the agency at a medical facility away from the agency's premises.
- q. Time spent taking a physical examination that is required for the employee's continued employment with the agency is "hours worked."
- r. Time spent working for public or charitable purposes at an agency's request, or under an agency's direction or control, is "hours worked." However, time spent voluntarily in such activities outside an employee's regular working hours is not hours of work.
- s. Standby duty is "hours worked" if:
 - (1) The employee is restricted to an agency's premises, or so close thereto that the employee cannot use the time effectively for his or her own purposes; or
 - (2) The employee, although not restricted to the agency's premises:

- (a) Is restricted to his or her living quarters or designated post of duty; and
 - (b) Has his or her activities substantially limited; and
 - (c) Is required to remain in a state of readiness to perform work.
- t. Time spent in an "on-call" status is not "hours worked" if:
 - (1) The employee is allowed to leave a telephone number or to carry an electronic device for the purpose of being contacted, even though the employee is required to remain within a reasonable call-back radius; or
 - (2) The employee is allowed to make arrangements such that any work which may arise during the on-call period will be performed by another person.
- u. Sleep time.
 - (1) Bona fide sleep time that fulfills the following conditions is not "hours worked" if:
 - (a) The tour of duty is 24 hours or more;
 - (b) During such time there are adequate facilities such that an employee may enjoy an uninterrupted period of sleep; and
 - (c) There are at least 5 hours available for such time during the sleep period.
 - (2) Not more than 8 hours in a 24-hour period shall be considered sleep time.
 - (3) If sleep time is interrupted by a call to duty, the time spent on duty is considered hours of work.
- v. For nonexempt employees who receive compensation for overtime work on a "customary and regular" basis, effective on and after August 2, 1987, approved absences with pay (holidays, paid leave, or excused absences) are "hours worked." Employees who receive compensation for overtime work on a "customary and regular" basis include those who receive: annual premium pay for standby duty under 5 U.S.C. 5545(c)(1); annual premium pay for administratively uncontrollable overtime (AUO) work under 5 U.S.C. 5545(c)(2); and overtime pay for "regularly scheduled" overtime work, as defined in Part I, Section 23. (For additional guidance, see FPM Letter 551-22 dated December 23, 1987.)

2. Overtime Entitlement.

- a. Nonexempt employees who are ordered or approved to perform overtime work, who are "suffered or permitted" to perform work, or who are in waiting or idle time which is under the control of the agency and which is for the benefit of the agency, are required to be paid overtime for hours worked in excess of 40 in a week. Any work or duty performed by non-exempt employees for the benefit of NRC, whether ordered or not, is to be considered as time worked if the responsible supervisor:

(1) Has knowledge of such work; and

(2) Has an opportunity to prevent such work from being performed.

A nonexempt employee who is permitted to commence productive work prior to the scheduled work hours, or to continue to work during meal periods or at the end of the established work day, may become entitled to compensation even though the overtime work was not specifically ordered or approved.

- b. Overtime entitlement under the FLSA does not begin to accrue until an employee completes 40 "hours worked" within an administrative workweek. Under the rules stated in 1.a., above, for example, an employee who has any paid time off (such as holiday, annual, or sick leave, or excused absence with pay) will not be entitled to FLSA overtime pay until additional actual work during the same workweek exceeds the paid hours of nonwork. (Note, however, that this does not apply to employees covered by 1.v. above.) Thus, if a full-time employee covered by 1.a. above whose tour is Monday through Friday takes 8 hours (1 day) of annual leave on Wednesday, and then works 8 hours on Saturday, he/she has only 40 hours worked and would not be entitled to overtime under FLSA. However, the employee would be entitled to overtime under Title 5.

3. Regular Rate of Pay.

- a. Once it is determined that an employee is entitled to FLSA overtime, it is necessary to compute the "regular rate" of pay. This is done by adding all the includable payments made for all the "hours worked" in the administrative workweek, and then dividing this total by the total number of "hours worked." For example, the following types of payment are included in computing a "regular rate."

- (1) Basic or scheduled straight-time rates.
 - (2) Night differentials.
 - (3) Environmental differentials/hazard pay.
 - (4) Sunday premium pay.
- b. The following types of payments are excluded in computing an employee's "regular rate."
- (1) Additional overtime pay for work in excess of 8 hours per day or 40 hours per week.
 - (2) For employees covered by 1.a. above, payments for periods of nonwork. (If an employee works on a holiday, count the hours worked at straight-time rates.)
 - (3) Clothing or uniform allowance.
 - (4) Travel and per diem expenses (including mileage allowance).
 - (5) Call-back overtime payments to the extent the minimum two hours' payment exceeds time actually worked (if an employee is called back and works only one hour, count only one hour's pay and at straight-time rates).
 - (6) Cash or incentive awards.
 - (7) Any other payments not for actual hours of work.
4. Computation of FLSA Overtime Payments. In order to determine the amount of money a nonexempt employee should receive under the overtime provisions of the FLSA, it is necessary to compute the number of "hours worked" at the employee's "regular rate" of pay. For overtime pay purposes, different factors are included in computing the employee's regular rate of pay under FLSA than under Title 5. For instance, night shift differential and Sunday premium pay are included in the FLSA computations, while work in excess of 8 hours in a day are excluded. Time spent traveling away from the official duty station during regular working hours is considered hours of work under both Title 5 and the FLSA. However, time spent traveling away from the official duty station that occurs outside regular working hours may be considered "hours of work" under the FLSA, depending on the kind of travel involved as noted in Part VIII and in FPM Ltrs. 551-10 and 11. For travel time outside regular working hours to be considered "hours of work" under Title 5, the purpose or the condition of travel must meet one of the four

criteria of section 5542(b)(2) of Title 5, U.S.C. The regular rate is computed by adding up all includable payments made for all hours of actual work for the week, and then dividing by the total hours of actual work. The employee is entitled to an additional one-half the regular rate for each hour worked beyond 40 hours for the week and for fractions of hours. This is then added to the first sum, indicating the total amount due the employee for the week under the FLSA. This is compared to what the employee would receive under other applicable pay rules (such as Title 5) and the employee is entitled to be paid the greater amount. Thus, two computations will be necessary for certain nonexempt employees, considering the differences in definitions of overtime and the differences in computing regular rate of pay. Dual computations will not be necessary when:

- a. Overtime entitlements are identical under Title 5 and FLSA for:

- (1) GG employees whose basic rate of pay does not exceed Step 1, GG-10, who constantly work an 8-hour day shift, and who have no includable payments (e.g., night differential) and no excludable payments (e.g., annual leave).
 - (2) Wage system employees who constantly work the same shift (day or night) for the entire week, without any includable payments other than scheduled rate of shift differential and no excludable payments.
- b. Overtime entitlements will always be greater under the FLSA for:
- (1) GG employees whose basic rate of pay exceeds Step 1, GG-10, with or without any creditable payments.
 - (2) Any employee with add-on payments of any kind that are not paid on a constant basis for the week, such as Sunday and hazard differential, but without any excludable, creditable payment.

5. Pay Entitlement for Nonexempt Employees.

- a. Under Title 5 Only. A nonexempt employee who works in excess of 8 hours in a day or 40 hours in a workweek under Title 5 (but does not exceed 40 hours of actual work under the FLSA; e.g., due to a holiday or paid leave during the workweek), is entitled to overtime pay solely under Title 5.
 - b. Under FLSA Only. If the employee's work in excess of 40 hours in the workweek was "suffered or permitted" overtime work under the FLSA or work outside his/her regular working hours for purposes which are considered "hours of work" under FLSA and not considered "hours of work" under Title 5, the employee is entitled to overtime pay solely under FLSA.
 - c. Under Both FLSA and Title 5. If a nonexempt employee has worked in excess of 40 hours under both FLSA and Title 5, he/she is entitled to overtime pay under both statutes; the employee shall be compensated under whichever statute provides the greater overtime pay benefit. (Attachment 5 of FPM Ltr. 555-1 outlines the method for determining the employee's greater overtime pay benefit.)
6. Statutory Limits on Premium Pay. In no circumstances will the maximum earnings limitation of section 5547 of Title 5, U.S.C., serve to limit a nonexempt employee's entitlement to overtime pay under the FLSA. As stated previously, when a nonexempt employee is entitled to overtime pay under both the FLSA and Title 5, the employee is entitled to whichever statute provides

the greater overtime benefit. If the employee's greater overtime benefit is under Title 5, but because of the maximum earnings limitation under that title overtime pay would be less than the amount of overtime pay the employee would receive under the FLSA, then, technically, the employee's greater overtime pay benefit is under the FLSA. If during either week, or both weeks, of a biweekly pay period a nonexempt employee is entitled to overtime pay under the FLSA, that FLSA overtime pay is ignored for the purpose of determining whether or not the maximum earnings limitation under section 5547 of Title 5 has been reached. For example, if an employee could be paid no more than \$50 in premium pay under the Title 5 limitation in a biweekly pay period, and during the first week of the pay period the employee is paid \$50 for overtime pay under the FLSA, the employee could still be paid the full \$50 during the second week of the pay period for any type of premium pay, including overtime pay under Title 5 without violating section 5547 of Title 5.

- D. **COMPENSATORY TIME UNDER 5 U.S.C. 5543 (Compensatory Time Earned In Lieu of Overtime Pay for Directed Overtime Work).** (Supervisors of bargaining unit employees should also see the negotiated agreement.)

Compensatory time in lieu of overtime pay for directed overtime work may be granted to salaried employees for occasional or irregular overtime worked in excess of 8 hours in a day or 40 hours in any administrative workweek (see Appendix 4136, Part III, A.2.b., and B.1.a., above). Compensatory time is earned at the rate of one hour off for each hour spent in irregular or occasional overtime work. (NRC compensatory time policy presumes that if management officials authorize employees to earn compensatory time, these officials should provide employees, insofar as possible, the opportunity to use the compensatory time.)

1. Compensatory Time for Exempt Employees. For overtime entitlement solely under 5 U.S.C. 5543, the FLSA has no effect and the rules for approving overtime and requesting and granting compensatory time are as follows:
 - a. When Earned. On request of the employee, compensatory time, in lieu of overtime pay, may be granted to exempt employees for occasional or irregular overtime worked in excess of 8 hours in a day (except employees on a first-40-hour workweek) or 40 hours in any administrative workweek. Supervisors should officially approve such compensatory time in advance, i.e., when the overtime work is authorized. (Supervisors of bargaining unit employees are also governed by the negotiated agreement.)

b. When Used and When Paid:

- (1) Each exempt employee may use compensatory time during the 12 subsequent pay periods upon approval of his or her supervisor. Use of the compensatory time will be granted or denied based on workload.
- (2) Each employee who does not use the compensatory time by the end of the 12 pay periods will be paid for the overtime work at the rate at which earned.
- (3) Each employee with an unused compensatory time balance at the time of separation or transfer from NRC will automatically be paid for the compensatory time at the rate at which earned. (See Appendix 4136, Part VI.J. for payment of unused religious observance time earned.)
- (4) Compensatory time earned for directed overtime work under 5 U.S. Code 5542 and 5543 may be requested for use for religious observance. Supervisors are encouraged to grant such requests. Only Office Directors may deny the use of accrued compensatory time for this purpose. (Also see Appendix 4136, Part VI.J.).
- (5) All compensatory time earned and used is to be reported on NRC Form 704, Time and Attendance Report (see NRC 4137, "Time and Attendance Reporting").

c. Limitations on Compensatory Time:

- (1) Compensatory time may not be credited towards any balance of advanced annual or sick leave owed by an employee (45 Comp. Gen. 243).
- (2) No compensatory time is allowed in lieu of holiday pay (26 Comp. Gen. 431). However, under 5 U.S.C. 5550a, a work schedule adjustment may be made which permits work on a Federal holiday for use as an offset against time off for religious observance (see Appendix 4136, Part VI.J.).
- (3) Compensatory time is not permitted locality rate employees (Wage Board Grades) (5 U.S.C., 5544). However, for the purpose of time off for religious observance (see Appendix 4136, Part VI.J.), the wage board employee may be permitted a work schedule adjustment which includes work on a Federal holiday to use as an offset.

(4) Statutory Limitation on pay: Employees may make religious observance work schedule adjustments regardless of the statutory maximum limitation on pay (which includes compensatory time) (see Appendix 4136, Part VI, J). In all other instances, these regulations apply:

(a) A salaried employee whose rate of basic pay equals or exceeds the maximum step rate for GG-15 is not allowed to earn or use compensatory time.

(b) A salaried employee whose rate of basic pay is less than the maximum step rate for grade GG-15, may earn and use compensatory time only to the extent that, if such overtime were to be paid at the applicable premium rates provided for in the basic salary tables, the employee's pay for the particular pay period in which the overtime services were rendered would not exceed the maximum step rate for grade GG-15 (37 Comp. Gen. 362). Example: An employee works 14 hours overtime during a biweekly pay period and is to be granted compensatory time. However, at the employee's grade and step rate, the employee's aggregate pay will exceed the maximum step rate for GG-15 (prorated on a biweekly basis) if payment is made for more than ten and two-tenth hours of overtime. Accordingly, the maximum number of hours of compensatory time which may be credited to that employee in lieu of pay is ten and two-tenth hours. The three and eight-tenth hours remainder is forfeited both for payment and compensatory time purposes. Thus, use of compensatory time before calculations for maximum pay have been performed could result in an exempt employee being charged annual leave, if the compensatory time used exceeded the amount determined to be creditable.

2. Compensatory Time for Nonexempt Employees. FPM Ltr. 551-6 contains rules for use of compensatory time for nonexempt employees. (Title 5, U.S.C., does not provide compensatory time for Federal Wage System Employees.) (Supervisors of bargaining unit employees should also see the negotiated agreement.)

The FLSA does not amend or rescind a salaried employee's entitlement to request compensatory time for irregular or occasional overtime work under section 5543(a)(1) of Title 5, U.S.C. Therefore, there are certain circumstances when an employee who is nonexempt under the FLSA may be granted compensatory time as a substitute for overtime pay. The circumstances under which pay entitlement

is earned (C.5., above) determine the conditions for allowing compensatory time in lieu of overtime pay. The nonexempt employee shall make a written request to substitute compensatory time for overtime payment (5 CFR 551.531(b)(2)).

- a. A nonexempt employee whose entitlement to overtime pay is under Title 5 only may request and may be granted compensatory time under the same procedures as apply to exempt employees; i.e., allowing 12 pay periods after it was earned for use of compensatory time (see Appendix 4136, Part III, D.1., above).
- b. If a nonexempt employee performs overtime in a given workweek and his/her overtime entitlement is solely under the FLSA, or is greater under the FLSA than under Title 5, he/she MUST be paid for the overtime work, unless he/she requests, and is granted, compensatory time as an offset within the same workweek. In this case, compensatory time must be used within the same workweek earned and cannot be accrued. If after completion of the workweek, a nonexempt employee has any entitlement to overtime pay under FLSA, he/she cannot be required to take compensatory time instead of pay.

Procedure: The employee may request, and the supervisor may grant, compensatory time in lieu of overtime pay during the remainder of the same workweek. Appropriate entries should be made on the Time and Attendance Report, and on the NRC Form 145.

- c. For overtime under both the FLSA and Title 5, U.S.C. 5542 when overtime pay entitlement under Title 5 is equal to or greater than under FLSA, NRC may grant the employee compensatory time during subsequent workweeks, upon the request of the employee, under the following procedures:

- (1) Employee Choice and Notification. The employee must indicate whether he/she desires overtime pay or compensatory time on his/her Time and Attendance Report, with appropriate approvals, when submitted to the Payroll Office. If it is determined by the Payroll Office, based on any dual computations required, that the employee can be credited with compensatory time, the employee will be so credited. Notification to the employee will be achieved through entry contained on Form NRC 709, "Earnings and Leave Statement," which accompanies pay checks. If the Division of Accounting determines, based on any dual computations required, that the nonexempt employee cannot be credited with compensatory time, the employee shall be paid appropriately for the overtime work. Thus, a nonexempt employee with a potential entitlement under both FLSA and Title 5 who requests compensatory time to be used in a subsequent workweek should exercise care in using compensatory time before receipt of the Earnings and Leave Statement to avoid charge to annual leave if

the calculations indicate the greater entitlement is under the FLSA.

(2) When Used and When Paid:

- (a) The nonexempt employee having entitlement to compensatory time for use in subsequent workweeks will have entitlements as described in Appendix 4136, Part III, D.1. above.
- (b) If a nonexempt employee initially elects compensatory time, but prior to using it decides that the pay for the overtime work is preferable and so notifies the Division of Accounting in writing, NRC will pay the employee for that overtime work under Title 5 at the rate at which it was earned.

PART IV

NIGHT WORK

A. AUTHORITY AND APPLICABILITY

Section 5545 of Title 5, U.S.C., requires, with certain exceptions noted in Appendix 4136, Part IV, B.1.a. and b., below, that (1) any regularly scheduled work between the hours of 6:00 p.m. on any day and 6:00 a.m. the following day is considered night work; and (2) the employee will be paid for the time involved at the basic rate of pay, plus premium pay ("night differential") at 10 percent of the basic rate of pay. This statute applies to most salaried employees in NRC whether full-time or part-time (see Part VIII); however, these NRC employees are not covered under the above statutory provisions:

1. Locality rate employees (see D., below).
2. WAE (When Actually Employed) employees (see Part VIII).
3. Experts and consultants (see Chapter 4139).
4. Employees whose basic rate equals or exceeds the maximum rate for grade GG-15 (see Chapter 4136-0515).
5. Employees receiving additional annual pay in lieu of premium pay (see Part VII).
6. Certain employees being given training under 5 U.S.C. 4101 through 4118 the Government Employees Training Act) (see Chapter 4136-0516).

B. REQUIREMENTS

1. Night Work. Night work is that which falls between 6:00 p.m. on any day and 6:00 a.m. the following day. Night differential is intended as payment for certain recognizable inconveniences resulting from "regularly scheduled" work at these abnormal clock hours. Extra pay authorized for services performed after 6:00 p.m. is computed on the basis of either standard or daylight saving time, depending upon which time is observed by law, custom, or practice where such services are performed.
2. Regularly Scheduled. To constitute "regularly scheduled" work, the night work, in accordance with relevant Comptroller General decisions must conform to either one of the standards below, as applicable.
 - a. the work must be duly authorized in advance by proper authority and must be scheduled to recur on successive days, or after specified intervals such as:

- (1) on only 1 day of each successive workweek (25 Comp. Gen. 151);
 - (2) on at least 1 day of each of 2 or more successive workweeks (36 Comp. Gen. 657);
 - (3) on the first 3 days of every other workweek (39 Comp. Gen. 73); or
- b. the work must have continued for a period of time sufficiently long to be regarded as "habitual" or "usual or customary." In cases where the "inherent requirement" of employment is that the employee must remain on duty until a task is completed, or until relieved by another employee, the "night work" must be performed on a substantial proportion of the days, over a period of time, even though the night work does not follow a fixed hours-of-work pattern (41 Comp. Gen. 8).
3. Absences on Holidays. Payment of a night differential is authorized during periods when an employee is excused from regularly scheduled night work on a holiday or other nonworkday.
 4. Absence on Leave. Payment of a night differential is authorized for periods of paid leave only during pay periods in which the employee's total paid leave inclusive of both night and day work is less than 8 hours (5 U.S.C. 5545 (a)(2)). If an employee has 8 hours or more of paid leave (other than the exceptions noted below), night differential will be paid only for the night differential hours actually worked. When an employee's tour of duty permits payment of night differential pay, he or she is entitled to night differential pay during a period on military leave, jury service, leave in connection with funerals of immediate relatives in the Armed Forces, or, as a veteran, is absent for certain military funeral services (see Chapter 4145). Night differential is not authorized for any period covered by lump-sum payment.
 5. First-40-Hour Workweek. Payment of night differential is authorized for work performed between the hours of 6 p.m. and 6 a.m. by employees on a first-40-hour workweek (unpublished Comp. Gen. Decision B-162347, dated September 15, 1967).
 6. Travel Status. Payment of a night differential is authorized during all night hours included within the employee's regularly scheduled workweek while in an official travel status even when not performing actual duty.
 7. Temporary Assignment to Regularly Scheduled Night Work. Payment of night differential is authorized for night work performed by an employee (including a WAE employee) when assigned temporarily (a) to a regularly scheduled tour of duty which includes night work (33 Comp. Gen. 4; 41 Comp. Gen. 8), or (b) to substitute for an employee whose regularly scheduled tour of duty includes night work.

8. Standby Duty. Employees paid on a standby workweek or assigned a regularly scheduled period of standby duty in addition to a 40-hour basic workweek requiring full-time performance of actual work, will usually be paid for the night hours involved in such standby duty by applying premium pay on an annual basis in lieu of premium pay for scheduled overtime, night, Sunday, and holiday work. (See Appendix 4136, Part VII.) Where the standby work is on a less frequent or continuing basis however, but still regularly scheduled, as defined in 2., above, the employee may be paid night differential (40 Comp. Gen. 397).
9. Shift Employees.
 - a. When an employee is assigned to work on a shift which requires regularly scheduled night hours, he or she will be paid night differential for any night hours:
 - (1) in a work status, or
 - (2) in a paid leave status if, during the pay period involved, the employee has taken less than a total of 8 hours of paid leave.
 - b. When such an employee works overtime at night hours, he or she will be paid night differential:
 - (1) if regularly assigned to a shift which works at night hours.
 - (2) if regularly assigned to a shift which does not work night hours, but the overtime at night hours is "regularly scheduled," as defined in 2., above.
10. Call-back Overtime. Night differential is not payable during "call-back" overtime periods, unless such calls back to duty meet either of the standards for regularly scheduled work specified in 2., above. In such cases, night differential is payable for actual duty time at night hours involved. (42 Comp. Gen. 326.)

C. PAYMENT OF NIGHT DIFFERENTIAL

1. Amount of Differential. The night differential for salaried employees entitled to such payment under 5 U.S.C. 5545 is a flat 10 percent of the basic straight time pay rates in hourly equivalents. (For the limitation on payment of night differential and other premium pay during any one pay period, see NRC 4136-0514).
2. Relation to Basic Pay. For salaried employees, night differential is never considered a part of basic pay for purposes of computing holiday or Sunday premium pay, overtime, retirement, or group life insurance deductions, or any other purpose. However, it is included in determining "regular rates" to be used for computing overtime under the FLSA for salaried employees (see Appendix 4136, Part III.C.3., above).

3. Reemployed Annuitants. Night differential payments for reemployed annuitants will be computed on the reduced salary rate..
4. Minimum Credit. Night work will be directed, or authorized, and paid for in units as prescribed in NRC 4136-0515.
5. Relation to Holiday, Sunday, and Overtime Pay. For salaried employees, payment of a night differential is in addition to other premium pay for overtime, Sunday, or holiday work, and the night differential is not included in the rate of basic pay used to compute the overtime, Sunday, or holiday pay. An employee earns the same amount of night pay differential during a night overtime period when temporarily assigned to regularly scheduled night work (see 7., above) whether paid in money or granted compensatory time for the overtime work (32 Comp. Gen. 434).

D. LOCALITY RATE EMPLOYEES

Night differential is provided to NRC locality rate employees in accordance with administrative decision under the authority of Section 161d., of the Atomic Energy Act of 1954, as amended, to parallel prevailing practices among employees in the particular locality concerned. Consequently, a locality rate employee who performs night work will be paid the current night differential appropriate to the locality to which assigned for either the second or third shift, depending on the clock hours involved. The night differentials are shown in the applicable locality wage schedule. Payment of night differential to NRC locality rate employees will be made in accordance with the instructions in FPM Supplement 532-1, Subchapter S8-4, "Night Shift Differential and Premium Pay."

PART V

SUNDAY WORK

A. AUTHORITY AND APPLICABILITY

Section 5546(a) of Title 5, U.S.C., requires that salaried employees be compensated at the rate of basic pay plus 25 percent for any regularly scheduled 8-hour period of service, which is not overtime work, which falls (totally or partially) into the period between Saturday midnight and Sunday midnight. In such cases, premium payment is made for the entire 8-hour shift, regardless of the amount of time actually scheduled between Saturday midnight and Sunday midnight. The above statutory provisions do not cover the following types of employees:

1. Part-time and WAE (When Actually Employed) employees, since they normally could not satisfy the requirement for a regularly scheduled 8-hour period of service (46 Comp. Gen. 337). For an exception, see Appendix 4136, Part V, B.5., below.
2. Experts and consultants (see NRC Chapter 4139).
3. Employees whose basic rate equals or exceeds the maximum rate for grade GG-15 (see NRC 4136-0514).
4. Employees receiving additional annual pay in lieu of premium pay (see Appendix 4136, Part VII).
5. Certain employees being given training under 5 U.S.C. 4101 through 4118 the Government Employees Training Act, as amended. (See NRC 4136-0516).

B. REQUIREMENTS

1. Basic.

- a. An employee is entitled to this premium pay when performing work during a regularly scheduled basic workday any part of which is within the period beginning at midnight Saturday and ending at midnight Sunday.
- b. Sunday premium is not payable during overtime periods.
- c. An employee who works on a Sunday holiday is entitled to Sunday premium pay in addition to pay for holiday work as prescribed in Appendix 4136, Part VI.
- d. An employee who works night hours on a Sunday is entitled to Sunday premium pay in addition to payment of a night differential as prescribed in Appendix 4136, Part IV.

2. Effect of Leaves of Absence (46 Comp. Gen. 158).
 - a. An employee on leave for the entire basic workday, except as provided in d., below, is not entitled to the premium pay for Sunday work since no work is performed.
 - b. An employee on leave for all the Sunday hours of the basic workday is not entitled to premium pay for Sunday work since no work is performed on Sunday.
 - c. An employee who worked as little as one Sunday hour of the basic workday is entitled to Sunday premium pay for all hours in nonleave status on the basic workday.
 - d. If a regularly scheduled workweek includes Sunday, the employee is entitled to Sunday premium pay while absent on 15 days military leave, as authorized by 5 U.S.C. 6323 (unpublished Comp. Gen. Decision B-160622 of January 13, 1976); or on jury or witness service (5 U.S.C. 6322); or, as a veteran, is absent for certain military funeral services (5 U.S.C. 6321); or is on leave in connection with funerals of immediate relatives in the Armed Forces (5 U.S.C. 6326) (29 Comp. Gen. 427).
3. Duty Periods of Other than 8 Hours (46 Comp. Gen. 337).
 - a. A full-time employee who performs regularly scheduled non-overtime duty of less than 8 hours, any part of which is on Sunday, is entitled to Sunday premium pay for all hours of that duty.
 - b. A full-time employee who performs regularly scheduled duty of more than 8 hours, any nonovertime part of which is on Sunday, is entitled to Sunday premium pay for 8 hours only.
 - c. A full-time employee who is assigned to a first-40-hour workweek is entitled to Sunday premium pay for work performed as part of the basic 40 hours (unpublished Comp. Gen. Decision B-162347, dated September 5, 1967), up to a maximum of 8 hours (57 Comp. Gen. 43).
4. Separate Basic Workdays (46 Comp. Gen. 158). An employee who has 2 separate basic workdays each involving some Sunday duty (such as a basic workday beginning on Saturday and ending on a Sunday and another basic workday beginning on Sunday and ending on Monday), is entitled to premium pay for Sunday work for all hours worked but not to exceed 8 hours for each basic workday involved.
5. Temporary Assignment to Regularly Scheduled Sunday Work. Payment of Sunday premium pay is authorized for Sunday work performed by an employee (including a WAE employee) when assigned temporarily (a) to a regularly scheduled tour of duty which includes Sunday work or (b) to substitute for an employee whose regularly scheduled tour of duty includes Sunday work.

6. Travel Status. Payment of Sunday premium pay is authorized during all Sunday hours, as defined in 1.a., above, of the employee's regularly scheduled workweek while in an official travel status even when not performing actual duty.
7. Standby Duty. Employees engaged in nonovertime, standby duty on a Sunday and not being paid additional annual pay in lieu of premium pay for scheduled overtime night, Sunday, and holiday work (see Appendix 4136, Part VII) are entitled to Sunday premium pay for not to exceed 8 hours of such standby duty.

C. ADMINISTERING SUNDAY WORK

Directors of Offices are expected as a matter of good management and efficiency to make every effort to minimize Sunday work assignments and establish necessary controls over its authorization. Even where an operation has a necessary daily or around-the-clock character, the minimum number of employees consistent with operating needs should be assigned to Sunday duty.

D. PAYMENT OF SUNDAY WORK DIFFERENTIAL

1. The premium pay differential for Sunday work amounts to 25 percent of the employee's rate of basic pay for each hour of Sunday work as defined above. This differential is added to the employee's basic rate of pay.
2. In the case of locality rate employees assigned to a night shift, the differential for any regularly scheduled nonovertime Sunday work is computed at 25 percent of base pay, including the appropriate night shift differential authorized in the applicable locality rate schedule.

PART VI

HOLIDAYS

(See Bargaining Agreement for Bargaining Unit Employees)

A. EXPLANATION

1. The following are legal holidays in the Federal service:

New Year's Day - January 1

Washington's Birthday - the third Monday in February

Memorial Day - last Monday in May

Independence Day - July 4

Labor Day - the first Monday in September

Columbus Day - the second Monday in October

Veterans' Day - November 11

Thanksgiving Day - the fourth Thursday in November

Christmas Day - December 25

Any day designated as a holiday by Federal statute or Executive order.

2. Inauguration Day, January 20 (or the next succeeding day selected for the public observance of the inauguration of the President when January 20 is a Sunday) of each fourth year is also a legal holiday, but only for employees employed in the metropolitan area of the District of Columbia (28 Comp. Gen. 515). A Headquarters employee in travel status outside the Washington Metropolitan Area on Inauguration Day is not entitled to the Inaugural Day Holiday (28 Comp. Gen. 515).

B. OBSERVANCE OF HOLIDAYS

1. Employees, except as stated below, will be excused from duty on holidays that fall on workdays without charge to annual leave and receive pay for such holidays at the employees' basic rates.

Employees required to perform essential duties which cannot be delayed or interrupted will be paid either at the holiday or overtime premium rate, as appropriate. Such employees are also entitled to premium pay for holidays when on military leave, jury service,

leave in connection with funerals of immediate relatives in the Armed Forces, or, as veterans, are absent for certain military funeral services, as these paid leave rights are described in 5 U.S.C. 6321 through 6326, but only if they would otherwise have been expected to work on such holidays.

2. Where an employee has been in authorized leave of absence without pay (LWOP) status, the following rules regarding holiday pay apply (13 Comp. Gen. 206):
 - a. If a holiday occurs immediately before or immediately after such a period of LWOP, as actually taken, the employee concerned will be paid at the regular rate for that holiday.
 - b. If a holiday occurs within such a period of LWOP as actually taken, the employee concerned will not be paid for the holiday; i.e., paid leave may not be substituted for approved LWOP in order to secure holiday benefits.
3. Where an employee has been on unauthorized leave of absence without pay (AWOL) status prior to a holiday, there is no entitlement to pay for the holiday (16 Comp. Gen. 807), even when returning to duty at the scheduled hour of commencing duty on the first day after the holiday, except where it is later administratively determined that the absence was excusable and hence not "AWOL" (23 Comp. Gen. 960).
4. Holidays already recognized as occurring on the calendar days specified in A.1., above, which fall within the period covered by annual leave, will not be included in the computation of any lump-sum payment to which the employee is entitled. (See NRC 4145, "Leave Administration," and FPM Letter 550-73 implementing P.L. 96-499, December 5, 1980.)

C. OBSERVANCE OF HOLIDAYS FALLING ON NONWORKDAYS FOR EMPLOYEES ON A BASIC 40-HOUR WORK SCHEDULE (See D., below for examples)

1. Sunday Holidays. When a holiday falls on Sunday, the holiday for an employee whose basic workweek does not include Sunday and who would ordinarily be excused from work on a holiday falling within the basic workweek will be the next workday (Executive Order 11582 of February 11, 1971).
2. Holidays Falling on Saturday or Other Nonworkdays. When a holiday falls on a Saturday, or any other nonworkday other than Sunday, the employee's holiday will be the immediately preceding workday, except in the following instance (5 U.S.C. 6103):

Exception: Where an employee's basic workweek includes Sunday, a nonworkday will be administratively scheduled as the "regular" weekly nonworkday in lieu of Sunday. Normally, the first nonworkday in the administrative workweek will be designated as the "administrative Sunday." When a holiday

falls on an employee's "administrative Sunday," and the employee would ordinarily be excused from work on a holiday falling within the basic workweek, the holiday for that employee will be the next workday (Executive Order 11582 of February 11, 1971).

D. HOLIDAY TIME DETERMINATION FOR EMPLOYEES ON A BASIC 40-HOUR WORK SCHEDULE (Examples of Appendix 4136, Part VI, C., above)

Example 1: For most employees, the basic workweek is Monday through Friday. For these employees, if a holiday falls on Saturday, it will be observed on the preceding Friday. If a holiday falls on Sunday, it will be observed on the following Monday.

Example 2: For some employees, the basic workweek may be a 5-day period such as Wednesday through Sunday with Monday and Tuesday as the nonworkdays. For these employees, if a holiday falls on Saturday or Sunday, it will be observed on that day. If a holiday falls on Monday or Tuesday, determination of the workday to be considered as the employee's holiday will depend on which nonworkday is designated as the "administrative Sunday." Normally, in the case above, this would be Monday--the first nonworkday in the administrative workweek. Then, the employee's holiday, if a legal holiday falls on Monday, will be the following Wednesday. Under the same circumstances, if the legal holiday falls on Tuesday, the employee's holiday will be the preceding Sunday.

E. HOLIDAY DETERMINATION IN CASES OF UNUSUAL WORKDAY SCHEDULING

1. Basic Workday Involving Two Calendar Days. In some cases, an employee may be required to start a workday on one calendar day and finish on the next, for example, an 8:00 p.m. to 4:00 a.m. workday. In these cases:

- a. all of the workday commencing on the calendar day which is a holiday is considered as the employee's holiday.
- b. if the holiday falls on a calendar day during which the employee does not start a work period, determination of the work period to be considered as the employee's holiday will follow the rules in C.2., above.

2. Two Basic Workdays Falling on One Calendar Day. Where an employee has two basic workdays commencing on a calendar day which is a holiday, the director of the office concerned will designate all of either basic workday as the employee's holiday.

F. HOLIDAY OBSERVANCE FOR STANDBY EMPLOYEES

For purposes of holiday determination, the unit of time for which an employee in "standby" status will be excused is a 12-hour shift. If the employee is on 24-hour duty, the director of the office concerned will designate which 12-hour shift is the employee's holiday in accordance with the rules in C., and D., above (see Part VII).

G. HOLIDAY OBSERVANCE FOR EMPLOYEES ON A FIRST-40-HOUR WORKWEEK

1. Determination of Federal Holidays. The determination of holidays for employees on a first-40-hour schedule is made by the Office Director or Regional Administrator, if delegated this authority, in lieu of corresponding calendar holidays, as follows:
 - a. If a holiday occurs on Sunday, the Office Director shall designate in advance either Sunday or Monday as the employee's holiday and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on the day designated as the employee's holiday.
 - b. If a holiday occurs on Saturday, the Office Director shall designate in advance either the Saturday or the preceding Friday as the employee's holiday and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on the day designated as the employee's holiday.
 - c. If a holiday occurs on any other day of the week, that day shall be the employee's holiday and the employee's basic 40-hour tour of duty shall be deemed to include eight hours on that day.
 - d. When a holiday is less than a full day, proportionate credit will be given under paragraph a, b, or c, of this section.
2. Computation of Pay for Holiday Work. Pay for holiday work for employees on a first-40-hour workweek is computed based on the circumstances in each case. These examples are provided as guidance.
 - a. Application of paragraph G.1.a., above: A holiday falls on Sunday:
 - (1) The employee generally starts work for the week on Monday. The Office Director designates Monday as the employee's holiday. The employee does not work on Monday and is credited with eight hours toward his 40-hour workweek.
 - (2) The Office Director designates Sunday as the employee's holiday. The employee works two hours on Sunday and 10 hours on Monday. The employee is paid at the holiday premium for two hours on Sunday and is credited with six hours of excused absence on Sunday. The work on Monday is paid at the straight-time rate. At the close of 10 hours on Monday employee has completed 18 hours toward the 40-hour week.

b. Application of paragraph G.1.b., above: A holiday falls on Saturday.

- (1) The Office Director designates Friday as the employee's holiday. The employee works 32 hours in the period, Monday through Thursday, but does not work on Friday or Saturday. The employee is credited with eight hours excused absence for Friday, making up his 40-hour week.
- (2) The Office Director designates Friday as the employee's holiday. The employee works 40 hours in the period, Monday through Thursday, but does not work on Friday or Saturday. The employee is credited with eight hours excused absence for Friday, the holiday. These eight hours are considered to be included in the 40-hour workweek. The last eight hours of work performed in the period, Monday through Thursday, are overtime hours.
- (3) The Office Director designates Friday as the employee's holiday. The employee works 36 hours in the period Monday through Thursday, six hours on Friday, and eight hours on Saturday. Eight hours on Friday are credited toward the 40-hour workweek. The employee is paid for six of these hours at the holiday rate. The other two hours on Friday represent excused absence on a holiday. The last four hours of the 36 hours worked Monday through Thursday are overtime hours. The eight hours on Saturday are overtime hours.

c. Application of paragraph G.1.c., above: Holiday Other Than On Sunday or Saturday.

- (1) A holiday falls on Tuesday. The employee works six hours on Monday, 10 hours on Tuesday, 12 hours on Wednesday, and 12 hours on Friday. Eight of the hours worked on Tuesday are considered to have been on the holiday. The employee is paid at the holiday premium rate for those hours.
- (2) A holiday falls on Friday. The employee works 10 hours each day, Monday through Friday. The employee is paid at the holiday premium rate for eight hours on Friday. Eight hours on Thursday and two hours on Friday are overtime hours.
- (3) A holiday falls on Friday. The employee works 12 hours each day on Monday and Tuesday, eight hours each day on Wednesday and Thursday, and does not work any more during the week. The employee is credited with the eight hours on Friday as excused absence on the holiday. The eight hours on Thursday are overtime hours.

- d. Application of paragraph G.1.d., above: Less than a Full-Day Holiday. Assume that a half-holiday is ordered on Thursday. Friday is a holiday. The employee works 40 hours during the period Sunday through Wednesday. Under paragraph (c) the 40-hour tour is considered to include four hours on Thursday and eight hours on Friday. The last 12 of the hours worked in the period Sunday through Wednesday are overtime hours.

H. ADMINISTERING HOLIDAY WORK

1. Control of Holiday Work. Supervisors are expected, as a matter of good management and efficiency, to make every effort to minimize holiday work assignments and to establish necessary controls over its authorization. Even where an operation has a necessary daily or around-the-clock character, the minimum number of employees consistent with operating needs should be assigned to holiday duty.
2. Authorization of Holiday Work. Authorization of irregular or occasional holiday work, or confirmation of oral authorization by a properly delegated official, must be in writing and the record will include a specific and concise written statement explaining or justifying the need for such holiday work and substantiating its urgent character. This written confirmation will be submitted with Time and Attendance Records.

I. COMPUTATION OF PAY FOR HOLIDAY WORK

1. Except as otherwise provided by statute, any employee who is assigned to duty on a holiday is paid for this duty at a holiday rate (which is twice the employee's regular basic rate of pay), plus other premium pay if applicable, provided:
 - a. the hours of holiday duty fall within the employee's basic workweek of 40 hours.
 - b. the holiday rate of pay is paid for not less than 2 hours or more than 8 hours of work. Work performed in excess of 8 hours is considered overtime work and is paid for at the regular overtime rate. (See G., above, for employees on a first-40-hour workweek).
 - c. the double rate of pay is in lieu of the employee's basic rate of pay.
 - d. that such double rate of pay is in addition to any extra rate of pay for Sunday or night duty, but for salaried employees the Sunday or night differential is not included in the basic rate of pay in computing pay for holiday duty. For locality rate employees, any night differential is included in basic pay.
 - e. that any employee who is called in to perform less than 2 hours of continuous work on a holiday, part of which work

is performed within the hours of the employee's regular daily tour of duty and the remainder as overtime will be paid (1) at the employee's holiday rate for the duty time falling within the regular daily tour of duty, and (2) at the overtime rate for the minimum call-back period of 2 hours. For example, an employee whose normal workday is 8:00 a.m. to 4:30 p.m. is excused from work because of a holiday but called back to work on that holiday from 3:30 p.m. to 5:00 p.m.; such employee would be paid for 7 hours at the basic rate of pay (8:00 a.m. to 3:30 p.m.), 1 hour at holiday premium rate (3:30 p.m. to 4:30 p.m.), and 2 hours' call-back at regular overtime rate (4:30 p.m. to 5:00 p.m.). (If the employee is called in to perform 2 hours or more of continuous work on a holiday, neither the holiday nor the call-back overtime minimum applies. Such employee would be paid (1) at the holiday rate for the duty time falling within the regular daily tour of duty, and (2) at the overtime rate for the duty time falling outside the regular daily tour of duty (37 Comp. Gen. 1).

- f. work required on a holiday will be directed, or authorized, and paid for in units as prescribed in NRC 4136-0515.
2. An employee who is excused from duty because a holiday falls within the basic workweek is entitled only to the basic rate of pay for that day (although there may also be entitlement to night differential, as provided in Appendix 4136, Part IV, B.3.). This also applies to locality rate employees in accordance with 5 U.S.C. 6104 but only:
 - a. when the employee is actually on the job at the close of the workday before, and at the beginning of the workday after, the holiday, in view of 18 Comp. Gen. 206 commenting on the statute above; and
 - b. when the employee has a regular tour of duty under an appointment not limited to 90 days or less (or has been currently employed for a continuous period of 90 days or more than one or more appointments without a break in service).
3. Under appointments effective on a Sunday preceding a Monday holiday, appointees who do not report for duty or take the oath of office until Tuesday following the holiday, will be paid at their basic rates of pay for the holiday not worked, if evidence such as verbal acceptance establishes the active acceptance of the appointment on Sunday (45 Comp. Gen. 660).
4. An employee who is assigned to overtime work on a holiday is entitled to the overtime rate of pay for that day, plus any extra pay allowable for night duty.
5. Compensatory time cannot be granted an employee in lieu of holiday pay, unless provided specifically by Executive order. (See J., below, for religious observance work schedule adjustment.)

6. A standby employee who is required to perform work during the 12-hour shift falling on a holiday, or observed as a holiday under F., above, will be paid at two-thirds the hourly holiday rate for all 12 hours of the shift, unless paid the annual premium differential.
7. For instructions regarding pay of employees in travel status on holidays, see Part VIII.
8. For instructions regarding holiday pay of part-time and WAE employees, see Appendix 4136, Part IX.
9. For instructions regarding holiday pay of employees on a first-40-hour workweek, see Appendix 4136, Part VI.G.2., above.

J. OBSERVANCE OF RELIGIOUS HOLIDAYS (5 U.S.C. 5550a)

The following provisions are based upon OPM guidance since OPM has not issued detailed regulations.

An employee whose personal religious beliefs require absence from work during certain periods of time may request to engage in work outside his or her regular hours as an offset against time taken off for meeting those religious requirements. Work performed under this provision is considered a work schedule adjustment. The premium pay provisions for overtime work in subpart A of part 550 of Title 5, Code of Federal Regulations, and section 7 of the Fair Labor Standards Act of 1938, as amended, do not apply to work performed by an employee for this purpose. Therefore, time earned under this provision is at the basic rate for use as an offset against time off for religious observance.

1. To the extent that such modifications in work schedules do not interfere with the efficient accomplishment of NRC's mission, the supervisor shall in each instance afford an employee requesting time off for religious observance the opportunity to alter his or her work schedule when the employee's personal religious beliefs require absence from work during certain periods of the workday or workweek.
2. Each employee who elects to engage in work outside his or her regular hours to earn time off for the purpose of religious observance shall make the request in writing stating the reason for the absence and the dates requested.
3. Supervisors shall respond to requests, in writing, indicating the action taken and the schedule to be followed in making up the time, if the request is approved. If the supervisor determines that granting the request would interfere with the accomplishment of the agency's mission, the supervisor shall record the specific reasons for recommending disapproval on the request and forward it through management channels to the Office Director. Supervisors shall maintain copies of requests and responses until the transaction is complete.

4. Only the Office Director may make a determination that an employee will be denied time for religious observance. Such a denial must meet the criterion of the OPM regulation, i.e., that such time off would interfere with the efficient accomplishment of the agency's mission. The Office Director's decision will be in writing and will be transmitted to the employee, through the supervisor in a timely manner.
5. The employee may work either before or after the grant of religious time off. Normally, the time should be worked within one pay period either before or after the religious observance.
6. Religious observance time may be accrued by working before or after regular working hours, on weekends, or on federal holidays. This time is credited to an employee on an hour for hour basis.
7. Documenting requests for and use of religious observance time for T&A purposes is described in NRC 4136-0513c.
8. Employees may earn religious observance time regardless of the biweekly statutory pay limitation and regardless of Wage Board status.
9. **Payment for Unused Religious Observance Time.** In the exceptional case where at the time of an employee's separation or transfer from NRC an unused religious observance time balance remains, the employee will be paid for it at the basic rate at which earned, not to exceed the biweekly statutory pay limitation.

The payment will be made upon receipt of a memorandum from the Office Director to the Director, Division of Accounting, authorizing payment. The memorandum will state:
 - a. the number of hours payable; and
 - b. the date each of the hours was earned.
10. In cases where an employee separating or transferring from NRC has taken time off for religious observance but has not earned it, the indebtedness will be satisfied by a charge to annual leave or leave without pay.
11. An employee may request use of previously accrued compensatory time (earned for directed overtime work) for this purpose. In this case, religious observance codes are not used on the T&A record.

K. OBSERVANCE OF OTHER HOLIDAYS

Every effort will be made to grant employees leave when requested for the purpose of observing, commemorative, State or local holidays. (See Chapter 4145, "Leave Administration.")

PART VII

PREMIUM PAY ON AN ANNUAL BASIS

A. PREMIUM PAY FOR REGULARLY SCHEDULED STANDBY OVERTIME, NIGHT, SUNDAY, AND HOLIDAY DUTY.

Premium pay on an annual basis, up to an appropriate percentage (not to exceed 25 percent) of the employee's basic pay rate which does not exceed the minimum rate for grade GG-10, can be granted in lieu of premium pay for regularly scheduled overtime, night, Sunday; and holiday work. The payments can be granted to employees who are required regularly to remain at or within the confines of their station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work. Additionally, premium pay must be paid for any irregular, unscheduled overtime in excess of the employee's regularly scheduled duty.

B. PREMIUM PAY FOR IRREGULAR OVERTIME, NIGHT, SUNDAY, AND HOLIDAY DUTY

Premium pay on an annual basis, up to an appropriate percentage (not less than 10 percent nor more than 25 percent) of the employee's basic pay rate, can be granted in lieu of premium pay for irregular or occasional overtime duty and duty at night on Sundays, and on holidays. Such payments can be made when: (1) such duty cannot be controlled administratively and requires substantial periods of irregular, unscheduled overtime duty and duty at night, on Sundays, and on holidays; and (2) the employee is generally responsible for recognizing, without supervision, circumstances which require remaining on duty. Additionally, premium pay must be paid for any regularly scheduled overtime.

C. APPLICATION

Subject to the statutory maximum limitation (see NRC 4136-0514), premium pay on an annual basis may be paid to NRC employees in grades GG 1-15 in accordance with these instructions.

D. REQUESTS FOR APPROVAL OF PREMIUM PAY ON AN ANNUAL BASIS

Office Directors and Regional Administrators submit requests for approval of premium pay on an annual basis to the Director, Office of Personnel. The Office of Personnel should be consulted prior to submission of a request in order to insure proper form of submission.

PART VIII

PAY FOR TIME IN TRAVEL STATUS

A. AUTHORITY AND APPLICABILITY

The instructions in this part apply to salaried employees in establishing the conditions and the compensability of travel status under 5 U.S.C. 5542 (b)(2). They are the only instructions which need be observed in the case of exempt employees, and in the case of nonexempt employees whose travel is totally accomplished within regularly assigned duty hours. Where nonexempt employees travel outside regularly assigned duty hours, however, comparative computation will have to be made to determine whether greater overtime benefits would accrue under FLSA or Title 5 U.S.C. (5 CFR 551 and FPM Ltrs. 551-10 and 551-11). This part also applies to locality rate employees when in a travel status. Bargaining unit employees are governed also by the negotiated agreement.

B. TIME IN TRAVEL STATUS

In determining the amount of an employee's time in travel status which is included as hours of employment, an employee is considered in travel status only for those hours (1) actually spent traveling between the official duty station and the point of destination or between two temporary duty points, and (2) for usual waiting time which interrupts such travel, as detailed below.

1. Common Carrier Travel. Travel status begins with the scheduled time of departure from the common carrier terminal, and ends upon arrival at the common carrier terminal located at the point of destination. Travel between the common carrier terminal and either the place of business or residence, whether temporary or permanent, is not considered time in travel status, except that, when the employee must spend 1 hour or more in travel between the common carrier terminal and either the place of business or residence, the actual time spent traveling, exclusive of waiting time at the terminal prior to scheduled departure time, is considered hours of employment.
2. Automobile Travel. Time spent in transit between residence and place of business may not be regarded as "time in travel status." Time in travel status begins with departure from the employee's place of business or headquarters, and ends with arrival at the point of destination. If the employee travels from the residence directly to the point of destination, the time consumed will be considered time in travel status, but such time, for purposes of payment of premium pay, may not exceed the estimated travel time from the employee's place of business to the point of destination (41 Comp. Gen. 82).

3. Cases of Employee Preference. When an employee, for personal reasons such as an aversion to flying, does not use the mode of transportation selected by the official authorized to approve the travel, or for convenience travels by an indirect route or interrupts travel, the employee is considered to be in a travel status only for the estimated time which would be spent in traveling to the point of destination by the mode of transportation selected by the official authorized to approve the travel in accordance with the statutory mandate reading as follows: "The travel of an employee shall be by the most expeditious means of transportation practicable and shall be commensurate with the nature and purpose of the duties of the employee requiring such travel" (5 U.S.C. 5733).
4. Usual Waiting Time. Usual waiting time, which refers to the time necessary to make connections in the ordinary travel situation (consistent with the overriding mandate of 5 U.S.C. 5733 quoted in 3., above, that travel should be performed as expeditiously as practicable), may be extended under conditions of heavy traffic and inclement weather, minus a reasonable time for eating and rest. (50 Comp. Gen. 519 (1971) and 523.)

C. PAYMENT FOR TRAVEL

1. Travel Within Scheduled Hours. Time spent in travel status away from the employee's official duty station, which falls within the days and hours of the employee's basic or extended workweek, will be paid at the appropriate basic or overtime rate, plus night differential if applicable. The premium rate for Sunday or holiday work, however, may not be applied under these circumstances when a Sunday or holiday falls within the employee's regularly scheduled workweek while the employee is in travel status (25 Comp. Gen. 399, 26 Comp. Gen. 477, 27 Comp. Gen. 613, 30 Comp. Gen. 72, 31 Comp. Gen. 362, 40 Comp. Gen. 439, 41 Comp. Gen. 82, and 46 Comp. Gen. 293).
2. Travel Outside Scheduled Hours. Time spent in travel status away from the employee's official duty station outside the days and hours of the employee's basic or extended workweek is considered "duty time" and the employee paid at the appropriate rate of premium pay when such travel is officially ordered or later approved (see Appendix 4136, Part III, A.2.b., for written record requirements) and:
 - a. involves the performance of actual work while traveling (40 Comp. Gen. 439, 41 Comp. Gen. 82, 43 Comp. Gen. 273); or
 - b. is incident to travel that involves the performance of work that can only be performed while traveling (47 Comp. Gen. 607); or
 - c. is carried out under arduous conditions (26 Comp. Gen. 433, 28 Comp. Gen. 547, 33 Comp. Gen. 274, 40 Comp. Gen. 439, 41 Comp. Gen. 82, and 51 Comp. Gen. 7); or

- d. results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to his or her official duty station; that is, results from unforeseen circumstances or an event which is scheduled or controlled by someone or some organization outside the Executive Branch of the Federal Government (Comp. Gen. B-163654, April 19, 1968, unpublished). For an event to qualify as administratively uncontrollable, there must be a total lack of government control. The following examples illustrate conditions when overtime compensation is not payable for travel time as an uncontrollable event: (1) events scheduled by NRC contractors or NRC licensees (Comp. Gen. B-222343, August 4, 1986) and: (2) meetings with foreign governments or international meetings if a U.S. Government agency participated in the scheduling of the meetings. In addition to meeting the "administratively uncontrollable event" test, as described, there must be an immediate official necessity in connection with the event which requires that the travel be performed outside the employee's regular duty hours. Thus, if NRC has sufficient notice of the event to permit the scheduling of travel during the employee's regular duty hours, overtime compensation for the travel outside the regular duty hours may not be paid (Comp. Gen. B-207795, February 6, 1985).

Unforeseen circumstances include instances such as where travel outside regularly scheduled hours is necessitated by (1) accident or equipment breakdown (see Comp. Gen. B-163654, April 19, 1968, unpublished) or (2) weather conditions (see Comp. Gen. B-168726, January 28, 1970, unpublished).

Compensatory time, if in accordance with Appendix 4136, Part III, D., may be requested in lieu of overtime pay, if there is an entitlement to overtime pay.

In general, work which is officially ordered or later approved under a., above, is that which can only be performed while traveling. Criteria for officially ordering an employee to perform, while traveling, work of the kind that would ordinarily be performed at the place of business, or for later approving such work, will be that used in determining whether or not overtime work should be officially ordered or approved. (See Appendix 4136, Part III, A.) Note that time spent in travel status outside scheduled hours which occurs under any of the circumstances specified in a-d., above, qualifies as work, and the time involved is paid at the appropriate rate of premium pay under the same instructions applicable to other overtime, Sunday, holiday, and night work (see B., above; Appendix 4136, Parts II-V; and 50 Comp. Gen. 519 and 523).

3. Scheduling Travel Outside Working Hours. To the maximum extent practicable, the time to be spent by an employee in travel status away from the official duty station will be scheduled within the regularly scheduled workweek (5 U.S.C. 6101 (b)(2) and 46 Comp. Gen. 425). However, when it is necessary to direct an employee to travel outside regularly scheduled working hours, including travel on nonworkdays and holidays, the travel must be undertaken irrespective of whether overtime is payable (31 Comp. Gen. 278). The employee will be entitled to overtime pay or compensatory time in lieu of overtime pay for such travel only when any one of the conditions under 2., above applies. When the employee will not be entitled to such premium pay, or compensatory time in lieu of overtime pay for such travel time, because none of the conditions under 2., above, apply, the official ordering the travel will record the reasons for ordering it at those hours, and will furnish the employee a copy of such reasons. (See NRC Appendix 1501, Part II.)
4. Travel Involving Driving a Motor Vehicle.
 - a. The driving of a motor vehicle, even if Government-owned or leased, is not performance of work where it is merely a convenient means of travel to or from, or between points of duty, or for transporting equipment and supplies for personal use (24 Comp. Gen. 456, 27 Comp. Gen. 613, 30 Comp. Gen. 72, 31 Comp. Gen. 362, and 40 Comp. Gen. 439).
 - b. Where driving a motor vehicle is a regular or usual assignment for an employee, it is payable regardless of the type of motor vehicle being driven, and whether the vehicle is loaded or unloaded (21 Comp. Gen. 724, 22 Comp. Gen. 636, 24 Comp. Gen. 65, 26 Comp. Gen. 433, 34 Comp. Gen. 696, and 28 Comp. Gen. 183).
5. Travel Between Places Located in Different Time Zones or Involving the Crossing of the International Dateline (48 Comp. Gen. 233 and 49 Comp. Gen. 329).
 - a. The lengthening or shortening of workdays due to travel between places located in different time zones is not to be taken into account for the purposes of determining an employee's entitlement to basic pay.
 - b. Employees crossing the International Dateline in a westward direction should not have their pay reduced because of the change in the date or time.
 - c. Employees crossing the International Dateline in an eastward direction should not have their pay increased because of the extra day or part of a day which results from such travel.

PART IX

PART-TIME AND WAE (WHEN ACTUALLY EMPLOYED) EMPLOYEES

A. OVERTIME

Part-time and WAE employees, whether salaried or locality rate, are entitled to overtime pay for hours worked in excess of 8 in a day or 40 in a week. (See 48 Comp. Gen. 439 regarding locality rate employees.)

B. HOLIDAYS

1. Salaried and locality rate employees who work on a part-time basis are entitled to pay for a holiday not worked, provided they work according to a regularly scheduled tour of duty and the holiday falls on one of the workdays so scheduled (26 Comp. Gen. 960).

Where a holiday falls on a nonworkday for a salaried, part-time employee, such employee is not entitled (32 Comp. Gen. 378) to treat one of his/her workdays as his/her holiday (as permitted for full-time employees in Part VI.C.). However, if the office is closed on any day for holiday observance (e.g., on Monday when a holiday falls on Sunday) and such day is a scheduled workday for that part-time employee, he/she may be considered in excused absence status (without charge to leave or loss of pay; see Appendix 4145). A part-time locality rate employee is entitled to similar pay treatment for such nonworkdays under 5 U.S.C. 6014 and OPM regulations (see FPM Supplement 990-1, Part 610, Subpart C, "Administrative Dismissals of Daily, Hourly and Piecework Employees").

2. Where the days of the workweek are not specified in the employee's workweek schedule, as for WAE employees, the general rule stated above is not met and the employee is not entitled to pay for the holiday.
3. Part-time employees, whether salaried or locality rate, are entitled to holiday premium pay for work on a holiday that falls on a day within their regularly scheduled tour of duty, but are entitled to their basic pay only for work on a day which is not a holiday but which is being observed as a holiday for full-time employees in accordance with Appendix 4136, Part VI.C. (26 Comp. Gen. 690, 32 Comp. Gen. 378.)
4. WAE employees are entitled to basic pay only for work either on a holiday or on a day which is being observed as a holiday for full-time employees in accordance with Appendix 4136, Part VI.C. (26 Comp. Gen. 690.)

5. Religious Observance Holidays. Part-time employees may request a work schedule adjustment for religious observance purposes (5 U.S.C. 5550a). (See Appendix 4136, Part VI.)

C. NIGHT WORK

1. Part-time salaried employees are entitled to the appropriate night pay differential provided they are assigned to such night work on a regularly scheduled basis. Part-time locality rate employees are entitled to the night pay differential specified in the appropriate locality schedule of wages whenever night duty is performed. (See Appendix 4136, Part IV, B. 7., regarding temporary night work assignments.)
2. Except as provided in Appendix 4136, Part IV, B. 7., WAE employees are not entitled to premium pay for night work since the basic requirement for night work of being "regularly scheduled" cannot be met.

D. SUNDAY WORK

Except as provided in Appendix 4136, Part V, B.5.,

1. Part-time salaried and locality rate employees are not entitled to Sunday premium pay (46 Comp. Gen. 337).
2. WAE employees are not entitled to premium pay for Sunday work since the basic requirement of being "regularly scheduled" cannot be met.

E. WORK SCHEDULES

See Appendix 4136, Part II.B.

NRC Appendix 4136
Part X

Approved: December 20, 1985

EXHIBIT 2

NRC Form 789 0-851 NRCM 4136		HOURS OF WORK REQUEST (Headquarters)				U.S. NUCLEAR REGULATORY COMMISSION	
EMPLOYEE'S SIGNATURE			TYPED NAME			DATE	
TITLE			GRADE	SERIES	ORGANIZATION	BARGAINING UNIT EMPLOYEE NONBARGAINING UNIT EMPLOYEE	
I REQUEST THE FOLLOWING WORK HOURS: (Check and complete applicable items)						FROM	TO
1. DATES SCHEDULE REQUESTED TO COVER							
2. OFFICIAL DUTY HOURS (Requires automatic approval)						8:15 A.M.	5:00 P.M.
3. FLEXITOUR HOURS (Days begin between 7:15 and 9:00 a.m. and end between 4:00 and 5:45 p.m.)						A.M.	P.M.
4. COMPRESSED SCHEDULE, NINE-HOUR DAYS (begin between 7:15 and 8:15 a.m. and end between 5:00 and 6:00 p.m.)						A.M.	P.M.
THE EIGHT HOUR DAY (begin between 7:15 and 9:00 a.m. and ends between 4:00 and 5:45 p.m.)						A.M.	P.M.
a. FIRST FRIDAY IN THE PAY PERIOD OFF			b. SECOND FRIDAY IN THE PAY PERIOD OFF				
ACTION BY SUPERVISOR							
1. APPROVED AS				2. DISAPPROVED IN ORDER TO MEET NRC's			
a. REQUESTED				a. OPERATIONAL AND MISSION REQUIREMENTS		b. RESPONSIBILITIES TO THE PUBLIC	
b. MODIFIED (below)				c. OFFICE COVERAGE		c. OTHER (Specified below)	
3. REMARKS							
4. SUPERVISOR'S SIGNATURE			TYPED NAME			DATE	

Approved: December 20, 1985

X-2

<p>Each employee must account daily for 8 hours plus ½ hours for lunch. This log is not a basis for payment. Thus, any time recorded in excess of 8½ hours must be officially authorized and approved under existing policy and procedures to constitute an entitlement to overtime pay.</p>		NRC FORM 703 (5-77)		U.S. NUCLEAR REGULATORY COMMISSION														PAY PERIOD									
		SIGN IN/OUT LOG FOR FLEXTIME																		FROM		TO					
		FIRST WEEK														SECOND WEEK											
		SUNDAY		MONDAY		TUESDAY		WEDNESDAY		THURSDAY		FRIDAY		SATURDAY		SUNDAY		MONDAY		TUESDAY		WEDNESDAY		THURSDAY		FRIDAY	
EMPLOYEE'S NAME		IN	OUT	IN	OUT	IN	OUT	IN	OUT	IN	OUT	IN	OUT	IN	OUT	IN	OUT	IN	OUT	IN	OUT	IN	OUT	IN	OUT	IN	OUT
	TIME																										
	INITIALS																										
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REMARKS																											

NRC FORM 703 (5-77)

X-3 Approved: February 25, 1982

HOURS OF WORK AND PREMIUM PAY
EXHIBIT 3

NRC Appendix 4136
Part X

EXHIBIT 4

NRC FORM 145 (6-80)				U.S. NUCLEAR REGULATORY COMMISSION		DATE	
REQUEST AND AUTHORIZATION FOR IRREGULAR OR OCCASIONAL OVERTIME OR COMPENSATORY TIME (See Chapter 4136 for requirements. All blocks MUST BE COMPLETED.)							
OFFICE/DIVISION				REPORTING T&A UNIT			
Authorization for payment or for compensatory time off in lieu of payment for irregular or occasional work in excess of 8 hours in a day or in excess of 40 hours per week is requested as follows:				PAY PERIOD ENDING			
NAME	DATE	O/T HOURS	EXPLANATION OR JUSTIFICATION	COMPENSATED BY			
				PAYMENT	COMPENSATORY TIME OFF		
RECOMMENDED			APPROVED				
SUPERVISOR'S SIGNATURE			APPROVING OFFICIAL'S SIGNATURE				

EXHIBIT 5

RULES FOR TIME SPENT OUTSIDE REGULAR WORKING HOURS
BY FLSA EMPLOYEES IN TRAINING

(See NRC Appendix 4150 for the details)

Type of Training	Time Spent in Training	Time Spent in Preparation for Training.
Training to bring an employee's performance up to an acceptable level in his or her present position.	YES	YES <u>2/</u>
Training to provide an employee the knowledge or skills to perform new duties or responsibilities <u>required</u> in his current position.	YES	YES <u>2/</u>
Training to <u>improve</u> an employee's performance <u>above</u> an acceptable level in his or her current position. <u>3/</u>	NO	NO
Training to provide an employee <u>additional knowledge or skills</u> for reassignment to another position or advancement to a higher grade.	NO	NO
Training in an apprenticeship program, an internship program, or training under the Veterans Readjustment Act. <u>4/</u>	NO	NO

- 1/ Time spent in training or in preparation for training during regular working hours is hours of work, unless the employee is on paid leave or leave without pay.
- 2/ Time actually spent by an employee within an agency's allowance for preparatory time is hours of work. Any additional time spent by an employee in preparation for training is not hours of work.
- 3/ Such training must be undertaken with the knowledge that the employee's performance or continued retention in his or her current position will not be adversely affected by nonentrollment in the training program.
- 4/ Any period of productive work during such training shall be considered hours of work.